MIGHT IS
RIGHT

FRIEDRICH
ROETTER

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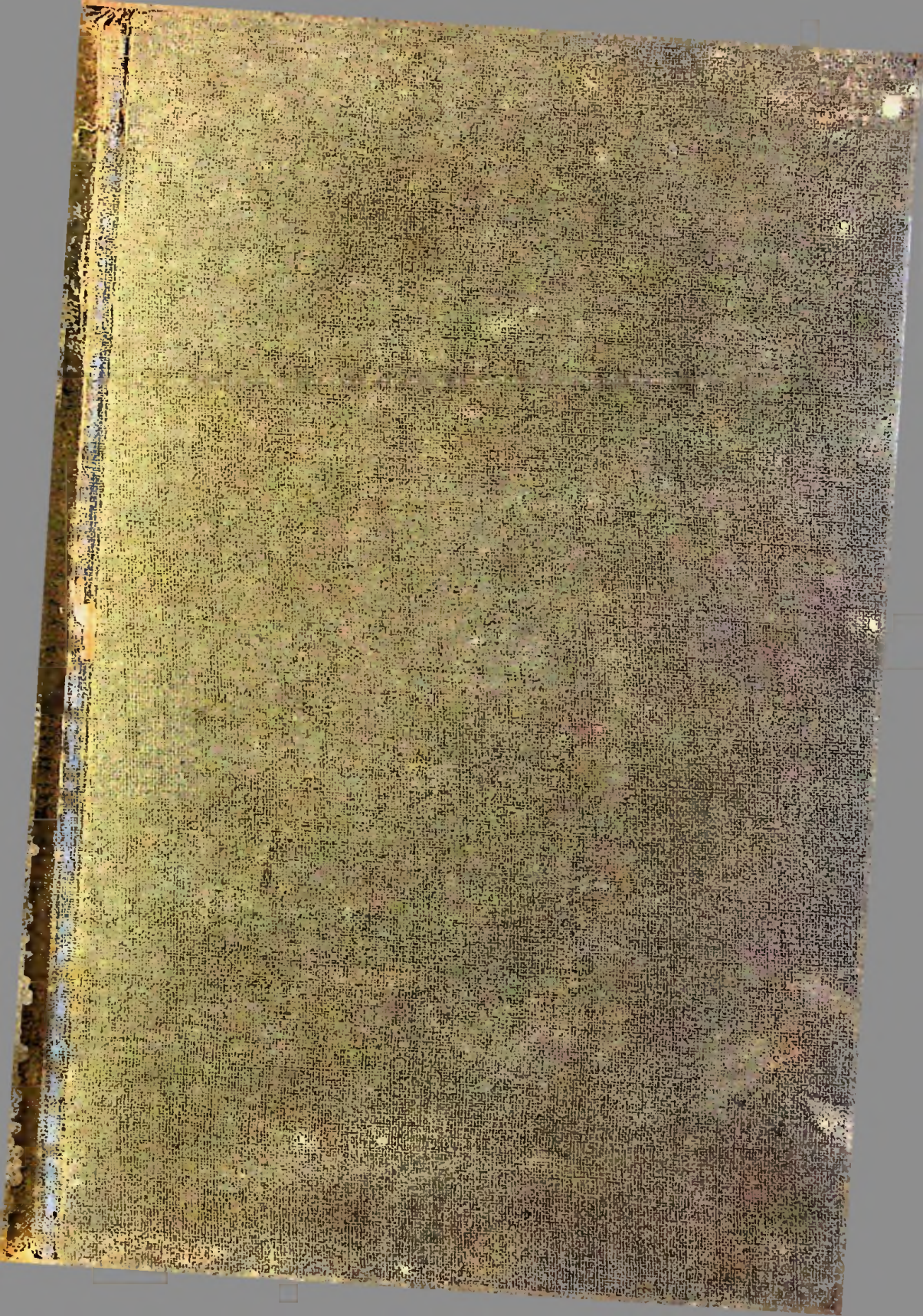

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MIGHT IS RIGHT

TO

MY WIFE

MIGHT IS RIGHT

BY

FRIEDRICH ROETTER

FORMER MEMBER OF THE BERLIN BAR

"Or if a man were prepossessed in favour of his country and its constitution, heedless of their frailty, not having noticed it or not having cared about it, then his patriotism would be blind only, and would die away as soon as his eyes were opened. . . ."

FRIEDRICH VON SCHILLER ON "PATRIOTISM"

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INTRODUCTION

My friend Robert is a great musician and lives, when he is not on tour, in a lovely little village outside Berlin. He is a man to be envied, for in music he can forget the cares that day by day press more heavily upon us. One day fate threatened to overtake him. The accusation was made against him, that his art was not "close to the people." In the new Germany even an artist is not entitled to live his own life, but must take an active part in political events and political arrangements. My friend was adroit enough to behave so as to make the desired impression on the outside world. Otherwise, the authorities would have taken his instrument away and "educated" him for a time in a concentration camp.

I have told this story occasionally when I have been asked to talk about my experiences in the new Germany, and I have observed the uncomprehending expression on the faces of my listeners. Nothing in their experience in their own land made it possible for them to understand the purport of the changes that have taken place in Germany since 1933.

The Reichstag fire gave the first hint of these changes. Innocent men were accused of arson so that they could be disposed of as political opponents. Among them was the leader of the Communist Party of Germany, Ernst Thaelmann. As a result of my efforts to defend him I was imprisoned in the spring of 1935. After my release I left Germany with my family towards the end of 1935 in order to avoid reimprisonment.

These methods of the National Socialists, including the murder of innocent men, have often been defended even

outside Germany with the argument that they were protective measures and therefore justifiable for political reasons. To my dismay people other than National Socialists occasionally held the opinion that such conduct was reprehensible only when it did not apply to Communists. My idea that the political opponent was entitled to full protection of the laws was not admitted, nor was the resultant conclusion, that he who is put without the law has a right to use every means to defend himself. It was presumably not realised that such an attitude supported the National Socialist idea which subordinates law to politics and denies the existence of objective law and even of objectivity itself. Therefore, he who for the sake of justice defends an innocent person, even though he does not share that person's political views, is considered an enemy of the National Socialists.

The idea of justice has its ultimate foundation in the need to curb man's will to power. To this end certain common rules have been built up in all human societies in which the same ideas about mutual relationships of life obtain. They strive to bring about a condition in which the members of society place their observance higher than the exercise of irresponsible self-will, to the end of guaranteeing mutual trust and equality of treatment under the law. Yet when certain members of the society attain a position of dominance they lightly yield to the temptation to substitute their own power for law and justice. We can measure the evil thus wrought by comparing this substitute for justice with that system for ordering the relationships of men which rests upon custom or jurisdiction and upon written and unwritten law.

At the Second Conference on "Comparative Law" at the Hague in August 1937, the French jurist Dumas spoke of mankind's eternal striving towards justice, and of the mysterious indefinable ideal that lies behind substantive law. According to him, mankind will never attain this ideal, but will never cease to strive towards it. He said :

" . . . les hommes ont faim et soif de justice ; sans y réussir, ils s'efforcent constamment d'y ajuster leurs institutions. Ils sentent qu'il y a au-dessus du droit positif, un idéal, mystérieux, indéfinissable, ils n'y atteindront jamais ; mais jamais, non plus, ils n'y renonceront."

The speeches of Reichsminister Frank, Leader of the Jurists of the Reich, at the Nuremberg Party Congresses in 1936 and 1937, indicate a different conception. He said, *inter alia* :

" . . . Nothing is a judicial authority of its own nature. Rather is it the authority of the state standing over the law that is the sole guarantee of the carrying out of the law. No Court can have more authority than it gets from the state in whose name it acts. No proposition of law can have more authority than falls to the lot of the state which proclaims it. Weak states have weak law. Power is the life of the law ! "

" It is not the appeal to law in itself that is strength. The service of the law can only be effective when this idea of law is backed by force. The law of a weak state must be weak. Nobody can trifle with the authority of the domain of an Adolf Hitler. . . .

These words indicate that the ruthless use of power compels men to certain behaviour ; that this compulsion is called right and that no restriction by the idea of justice underlies it. The advocates of this idea tried hard to reconcile it with the platonic idea of the " complete philosopher " as absolute monarch. But when we realise that Plato himself modified his original aristocratic idea with democratic views, the fallacy of the National Socialist doctrine of justice becomes evident. How does one find the " complete philosopher ? " The Nazis pay no attention to Plato's instructions for this. Their " philosophy " is a conglomeration of erratic and oft-times contradictory statements, which are supposed to be accepted without question.

But if we should find the " complete philosopher " in Plato's sense, he would certainly be no devotee of brutal

power. Therefore, he could only attain unlimited power in the state if it were given to him because of his superior intelligence by the citizens of the State acting as spiritually free beings unmoved by brute passion—a concept which the new Germany rejects.

Political power in this new Germany is so wide in scope that it penetrates into every aspect of life. Its tyranny has no fixed limit and the consequence is a general uncertainty about the law, which never allows the people to reach a state of repose. To one who lives in a country where there is still freedom of conscience and of thought, as well as personal security and free expression of opinion, it is almost impossible to conceive what a catastrophe the loss of these rights can be. At first one does not realise the full bearing of the whole situation, but trusts in the old civilisation and hopes things will get better soon. But with increasing knowledge comes a life of daily spiritual distress and troubled conscience. Many judges, lawyers, doctors and scientists in Germany would agree with me in this if they dared. But they neglected to unite at the right moment in a common resistance, although duty called them above all other men to do so. It was only in the ranks of the clergy that many followed the call of their conscience.

The glorification of power is nothing new in the history of mankind. In the inner life of the State the power principle was only gradually replaced by the law principle. In interstate relations and international law the power principle has always reigned. After the entrance of Germany into the League of Nations the hope of a change arose, but in vain. The victorious powers commenced against the defeated nations and each other the old scheming game in which international law served only to disguise the employment or non-employment of brute force according to whether or not it served their selfish interests. They observed international agreements not because justice demanded it, but because they feared the consequences of non-compliance. Otherwise they would have ignored

solemn promises. The treatment of Czechoslovakia in the autumn of 1938 has countless parallels in the history of international law. The idea that the Munich Agreement did away with the injustice of the Treaty of Versailles, whereas it has only created new injustice from the opposite point of view, shows the false dialectic of this so-called international law.

One of the consequences of the expansion of National Socialist power is that the law principle cannot overcome the power principle of international law, because the power principle has returned to the inner life of the State. In order to give this process a lawful appearance the Nazis use a peculiar method. They take old, sharply outlined concepts like "justice," "democracy," "self-government," "positive christianity," as symbols for ideas of their own, giving them totally different meanings. This is partly because no exactly equivalent expressions exist in the Nazi jargon and partly because of the obvious wish to mislead the people, so that they shall not notice too soon how much they are being cut off from the rest of mankind.

The development of our modern social relationships makes it often difficult to establish justice. But in us lives a recognition of injustice, which drives us to help an innocent person. The force principle wishes to stultify this feeling in favour of a "higher" interest of the people. If most of those who were able, and by their positions morally obligated to influence the new German Government to exercise justice towards the innocent had not hidden themselves behind subterfuges, such as reluctance to interfere in the internal affairs of another country, we should not have experienced the annexation of Czechoslovakia in March 1939. Moreover, we should not now have the situation in Europe in which many states must prepare to defend themselves against a "lightning attack" on the part of Germany. The countless victims of the events from the time of the Reichstag fire up to the present, both within and without the borders of Germany, suffer for the same reason : the denial of the idea of justice.

The individual's daily task leaves him little time to gain a clear idea of what is going on. Then suddenly an event occurs in his own life which forces him to face realities. So the unexpected insight into the fate of Thaelmann opened my eyes and induced me to seek for deeper meanings.

I shall relate how this happened and then give a picture of the transformation of Germany, which in turn will show how it has affected the life of the individual. The connection between the laws of the National Socialist State and the practice of its power and justice on the individual has not, as far as I know, been described. The laws of a country reflect its character. Because of this I dare to make this attempt and base it upon my own experiences as a lawyer in the Kammergericht in Berlin, the highest Prussian court, and as a notary.[1]

Many people have false ideas as to the character and aims of National Socialism and despair more and more of justice. We can find a solution for this contradiction only through a knowledge of the truth. He who has anything to contribute to this must seize his pen, impelled all the more to do so when he thinks of the thousands of innocent sufferers.

The idea of justice as a civilising conception still lives in the different nations, no matter how divergent their laws. When a great nation rejects this idea and emphasises racial and political differences between itself and other nations, and pays homage to a teaching which promotes "hatred of the enemy,"[2] then international co-operation in the attainment of those ends, which individual nations obviously cannot attain alone, is made impossible.

[1] A notary in Germany has, in certain cases, the same functions as a judge, whose prescribed juridical training he must possess.

[2] Hitler, *Mein Kampf*, 29th edition, p. 386.

Might is Right

CHAPTER I

PROTECTIVE CUSTODY AND FLIGHT

(*a*) *In the Prison Cellar of the Gestapa :*

No matter how crucial the events we may live through they do not affect us deeply until they touch our own lives. Personal experience is the sternest teacher. I was to learn this on the night of 28th March 1935, when, after hour-long searching and questioning in my office, I was taken to the Gestapa prison in the cellar of the former Museum of Industrial Art, in the Prinz Albrechtstrasse, Berlin. Before the entrance door stood a sentry of Adolf Hitler's guard in steel helmet and with a rifle at his shoulder. He held himself unnaturally rigid on the small wooden platform only large enough to stand upon with the feet slightly apart.

The chauffeur who brought me as the " only passenger " in a splendid six-cylinder car left me in a large room on the ground floor. After I had been registered, an orderly with steel helmet and pistol appeared and led me through corridors and down staircases into the prison in the cellar. He held his right hand on the butt of his pistol which was thrust in the open leather pocket of his belt.

The building was entirely given over to the use of the Gestapo.

In the cellar the orderly rang a bell. A man appeared. The orderly handed him a note and departed. Bolts were drawn, a lock turned in a door, and I was forced to enter. The man who had opened the door—he was a warder of

the prison—turned the lock once more and pushed the bolt. I was a prisoner !

I found myself standing in a very low windowless room. Behind me was the locked door. The thick wall on my left opened out upon a long corridor, at right angles to which were arranged the prison cells. Against the wall on my right were wooden benches and chairs. In the middle of the room under a glaring electric bulb was a table and a straight chair upon which I was to sit. In the wall opposite the entrance was a door leading into a room similar to that in which I found myself, without, however, any direct opening into the prison corridor. It was evident that the far side of this room opened towards the front of the house, for a glimmer of light could be seen on the barred windows. It served as a guardroom for the men of the Life Guard. I counted ten bunks in tiers of two, and I could hear the deep breathing of sleeping men.

An altercation arose between the non-commissioned officer on duty and the prison warder. The latter wished the door between the rooms kept closed ; the other wished it open. In a moment the petty world of exaggerated importance revealed itself. The N.C.O. gave himself airs before the warder because of his uniform, but the warder knew how to assert the authority of his position by shouting and swearing.

In the meantime I sat on my chair at the table under the glaring bulb with a feeling of unreality after this sudden blow of fate. In the past the difficulties which I had had to overcome were caused by forces against which I could defend myself. Even in the worst hours of the War I had felt that the enemy was willing to bear the same sufferings he meted out to us. But now without warning I found myself confronting a power which could crush me without danger to itself. I thought of the last words of a Gestapo official before my arrest. I had gathered from what he said that there had been no intention to arrest me, and only my behaviour on that evening had brought it about. I reproached myself when I thought that I might

have done this or that differently. Suddenly I heard a voice near me : " You have kept us waiting a long time. We have been expecting you for the last two weeks."

I looked up to see a man in pyjamas near me. He had turned aside on his way from his cell to the lavatory to speak to me. To my unbounded astonishment he related my case to me so exactly that I could not doubt the truth of his words. He was a National Socialist who had fallen into disfavour. " Think about the days when you were a soldier and pull yourself together. Then it isn't half so bad ! " Upon which he vanished. Judging by his age he never could have been a soldier himself.

These words opened my eyes. If my arrest had been planned for two weeks how could my behaviour that evening have brought it about ? No matter how I had behaved I could not have avoided this fate.

A host of torturing doubts crossed my mind. I had followed my conscience and had attempted to defend a man with whose political beliefs I was out of sympathy, and whose case had been prejudged before his arrest. Had I the right to jeopardise my own fate and that of my family for the sake of a lost cause ? On the other hand, had I not often been able to bring apparently hopeless cases to a successful conclusion ? Certainly I had been able to fight with legal means, which in Thaelmann's case were of no avail. Was it wrong, then, to follow one's conscience and defend an innocent man ? Suddenly a scene out of my youth came before my eyes : I was sitting in the University in Berlin listening to my first law lecture : Elementary Jurisprudence by Professor Wilhelm Kahl. In my ears sounded the never-forgotten words :

> " You wish to become jurists, young students of the law ! A noble profession ! Learn not only the rules of the law, but let yourselves be inspired by its eternal spirit, which is the foundation of all government. The mightiest empires of this world have perished when they have sinned against this spirit. Bow down before the law, but never let the law be humbled. Stand up fearlessly for the law and let no

earthly power cause you to shrink back; then, though your profession may be beyond peradventure an exacting one, in it you will find your life's happiest fulfilment."

The thousands of jurists in Germany have all at some time listened to such a lecture. And yet hardly one of them has stood out against the misuse of justice, nor have they formed a common front in its defence. They have conformed unprotestingly. A precious heritage was entrusted to us, and instead of conserving it at all costs we have thrown it away. It was only through my own bitter experience that I became convinced that in the Third Reich my profession had lost its meaning.

When I roused myself from my thoughts I found that it was two o'clock in the morning. My common sense told me to accommodate myself to my position as best I could in order to regain my freedom as soon as possible. I could hear the steps of the sentry on guard who was changed every two hours. I saw accidently that one of the cells was empty, but suppressed the question as to whether I might lie down, as I had the idea that I might thereby lengthen my stay. Then the warder said that in an hour when he knew whether a certain tubercular clergyman was to arrive or not he would lock me in a cell. So I laid my arms on the table, buried my face in them and fell asleep.

The warder waked me. I was to occupy cell number 6. It was a long narrow cellar room which I could pace off with four long strides, so narrow that I could not raise my arms sideways shoulder high. The window was covered with a metal shutter on the inside, which prevented any direct light from entering and made it impossible for the occupant of the cell to look out. Over the window was a small ventilator. On opening it I could see the bars on the outside of the window. The iron bed was attached on one side to the wall in such a way that it could be raised and lowered. The legs also could be bent out of the way. There was a hook in the wall and a chain to hold the bed in place when not in use. There was a straw mattress on the bed as well as a small pillow and a thin blanket, both

in blue and white checked covers. The cell was so narrow that one could only get into the bed to lie down from the foot end. In the space between the end of the bed and the door was just room for a four-legged wooden table and a stool. On the wall opposite was a small radiator and a spittoon. The walls and ceiling were painted a dirty grey. The floor was of brown stone. Over the strong wooden door, which was sheathed with iron, was an electric bulb with a glass shield.

The cells had radiators only because they were connected with the heating system of the entire house and could not be removed without damage.

The bed smelt. It had not been changed for six weeks, and every night had had a new occupant. I stood before it in evening dress and remembered that my wife and I were to go that evening to the house of friends. They would be worrying at home, and there was nothing I could do about it.

The warder was willing to bring me fresh linen if I would make the bed myself. I agreed willingly. First of all, however, I had to hand over my hat, collar, collar buttons, cravat and suspenders. The contents of all my pockets, with the exception of my handkerchief, even my fountain pen and money and the laces from my shoes, were taken away. It was disagreeable to have the warder search in every pocket, but fountain pens and shoe laces were often used as suicide weapons, and their removal was based on practical experience. I was allowed to keep my overcoat to use as a rug.

I set to work, fetched a pail of water, scrubbing brush and cloth and washed the floor clean, as I had learned to do in the Imperial Navy. Thinking how much I should prefer hanging up a decent hammock, I stripped the bed, shook up the straw, put the clean cover on the pillow and made the bed. The warder was obviously pleased with my military bearing, which contrasted oddly with the remnants of my evening clothes.

He explained to me the only thing in the furnishings

that I have not mentioned, the " pointer." This was a slender iron bar, so fixed in the thick wall to the right of the door that it could be pushed forwards and backwards a little, but not enough to pull it out altogether. On being pushed forward from inside the cell it gave a dull thud which was a signal to the warder that the prisoner had a request to make or wished to go to the lavatory. The warder would then either open or by pushing the bar back indicate that it was necessary to wait.

After these instructions I was shut into the cell. The door, perfectly smooth on the inside, was closed with a handle, half a turn of which locked it once. Without the use of a special key the handle could not be turned back. The door was locked again with another key, and bolted top and bottom besides. The clanging of bolts and the rattle of keys, as doors were opened and shut, went on all the time. I can still feel an almost physical pain at the memory of that noise.

Suddenly I felt as if I should suffocate in that narrow cell. Sitting on the chair in the anteroom seemed freedom in comparison. Air ! Air ! I rushed to the window and opened the ventilator. Fetching the stool I tried by standing on it to stick my head over the shutter to get some fresh air. I was able to breathe in a little cooler air and to see a star in a tiny piece of sky. I became calmer, but hearing the steps of the approaching guard I quickly climbed down, undressed and threw myself on the bed. The light over the door was burning and struck me in the eyes. I called the warder by means of the " pointer " and asked him to put out the light, as the switch was on the outside wall. He gruffly refused. At least once every half-hour the warder or a guard looked through the spy-hole at me. The spy-hole was a small glass-covered hole in the door, covered on the outside with an iron shield, so that the inmate could not see out.

I lay in a state between waking and sleeping. I could not sleep, and did not wish to stay awake and think. I wanted so badly to rest in order to gather strength for

resistance. I pulled my overcoat over my head, but presently the warder shouted from outside that I must lie so that my head and hands could be seen. Number 6 obeyed.

At six o'clock the cell was opened. I was ordered to make the bed, hook it up and sweep out the cell. The chain clanked as I lifted up the bed and hooked it. Then I went with four other prisoners into the washroom, the first in the row of nineteen cells, which served as toilet and kitchen as well. The number was painted on each cell. A towel, which one was not permitted to take within, was hung on the outside.

No more than five prisoners were allowed in the washroom at one time. Four tarnished copper cold-water faucets, a basin, and a toilet on one side of the room, and two racks of bowls, metal spoons, pails, brooms and few cleaning materials on the other completed the furnishings. In the corner opposite the toilet stood a four-gallon tin that smelt of coffee.

On the outside of the door hung a tiny mirror. To the left as one entered was a room for the warder, perhaps four times as large as my cell, from which the entire cell corridor could be overlooked. An inner room, separated from it by a wooden barrier, contained a bed, a wardrobe, a writing table with electric lamp on it and a chair. The effects taken from the prisoners were kept in the wardrobe and in a space under the wooden barrier which was closed with sliding doors. These things the warder listed in a book, and each prisoner was expected to sign under the list of his possessions.

From the ceiling hung a lamp and on the wall was a slate marked off in divisions, on which the make-up of the prison was noted daily. On the writing table was a telephone, arranged, however, for communications within the prison only. The window here was also barred, but had no shutter, so that one could see outside into the prison yard.

Of the five persons who were allowed in the washroom

at the same time four were supposed to wash while the fifth used the toilet. A soldier of Hitler's Guard stood in the open door with his hand on his pistol. All conversation was forbidden.

There was no soap whatever, but seeing a can of Vim I scattered some on my neck and hands and rubbed hard. Then, turning the cold water full on, I let it run over my head and the upper part of my body and into my mouth and tried to smooth my hair with my hands.

The other prisoners impressed me with their thinness and intimidated expression. They wore grey drill trousers and blue shirts, the dress of the Columbia concentration camp at Berlin-Schoeneberg, whence they had been brought to remain a few days for purposes of interrogation.

We understood each other without conversing by means of single words, gestures, glances and sounds. It was surprising how keen my sight and hearing suddenly became. Under normal conditions I should not have understood any of these things. Now I knew what each look, each movement, each tap was intended to mean, and was soon able to express myself in the same manner.

Suddenly the Guard called the warder. A minor scandal. A prisoner had hidden away three pieces of the cut-up newspaper which served for toilet use. The craving for reading matter often drove prisoners to disobey the strict rule about carrying paper to the cells. The warder threatened that if the offence was repeated the paper would be taken away.

After this unimportant but enlivening incident we went back to our cells. The light had been put out and a pale twilight filled the room. It was half-past six in the morning.

I walked back and forth in the cell 250 times and thereby had made 1000 paces. Then I did knee-bending exercises. It occurred to me that I had three cases to plead before the Court of Appeal at ten o'clock. What was I to do ? And suddenly I was deep in my professional concerns.

I had neither paper nor pencil with which to make notes. The warder told me they were allowed only when one wished to make a request to the Gestapo. Thereupon I asked in writing that I might be brought up for hearing immediately, as I wished to give instructions to my office. After what seemed an eternity I received the verbal answer that I should be brought up in the course of the morning.

About four hours after waking came breakfast. It consisted of bad lukewarm coffee in a tin bowl and a thick piece of dry bread. I ate it all, however, as I was hungry.

"Number 6, get ready for the hearing." I put on my overcoat. An orderly—with pistol and steel helmet as usual—led me up three stories. I asked him whether the black uniform was not very unpractical for service. He replied that he was not allowed to talk with me. In the corridor of the fourth floor I saw about fifteen men placed some paces apart from each other, with their faces to the wall and their hands stretched out sideways. They were not allowed to move. Several orderlies with drawn revolvers were watching them.

Would this happen to me too? We went around the corner into a large light room with the sun streaming in. My wife was there with three officials of the Gestapo and a typist. I learned that my wife telephoned my office immediately after I was taken and learned of my imprisonment from a Gestapo official there. She was told to appear before the Gestapo the next morning, but to bring me nothing and not to speak to anyone of the affair. This command was now repeated. Even our children were not to be informed. Any client who was too insistent was to be told that I had gone to the Riviera. My wife was clever enough to suppress the answer that none of my clients would believe this. She refused to lie to the children and guaranteed their silence. Then we were forced to part.

The Gestapo questioned me for hours. My imprison-

ment was on no account to become known to the foreign Press. Later my wife received telephone calls purporting to come from foreign journalists and intended to test her discretion. I walked to the open window and looked at the Prinz Albrechtstrasse and the green garden in front of it. As I leaned out a little an official seized me by the shoulder. At my astonished look he said : " You are not going to do anything silly." I assured him most earnestly that I was thinking about many things, but not of suicide.

I was allowed to telephone from the room to the Court and to my office. I was also given four sheets of paper and a pencil. In the afternoon one of my secretaries would be permitted to come to me with my papers and a notebook and I could dictate to her in the presence of an official. After that the orderly led me back to my " Riviera."

Lunch at one o'clock. A small amount of badly cooked barley broth and a slice of dry bread. After half an hour the cells were opened in order that we might clean the bowls and tin spoons and return them. Then I was shut in again for several hours, which passed quickly as I was working and making notes. Then I was again conducted upstairs with the usual procedure. The official looked through my notes. I would not be permitted to keep a diary. Then we set to work, my secretary sitting opposite me at the table, while the official worked at his writing table, keeping, however, a sharp lookout on me.

I was in good spirits as I found myself able to concentrate fully. I dictated letters, statements, drafts of agreements, accompanying each with instructions to my substitute. More than two hours flew by and I said good-bye to my secretary, who had been with me fifteen years—as long as I had been a lawyer—and returned to my cell.

As so-called supper there was again a cup of lukewarm coffee and a thick slice of bread with a faint smear of vile-smelling fat daubed on it.

Then came the second night which had to be passed like the first, with the light in my eyes and half-hourly control by the warder.

As the third night passed in the same manner and I found out that it was customary to put out the light in the other cells I tried to discover the reason for being treated differently. It appeared that my jailers feared an attempt at suicide because of my supposedly injured honour. Since the National Socialists consider every opponent to be without honour from the very fact of his opposition, their ascribing this quality to me might be considered very flattering. Hitler's juggling with the word "honour" has always seemed to me strange.

What, then, is honour? It is a pity that the new generation of Germans is no longer taught the nice distinction made by the Romans between "honour" and "reputation." "Honour" is each man's own moral worth (*dignitas*), of which, as Bismarck said, he can never be deprived; "reputation" (*existimatio*) is the opinion which man enjoys among his fellow-citizens.

Should I lose my hitherto spotless reputation, because in the defence of an innocent man I had not yielded to the demand of the State for full information concerning my case as it proceeded? Under the Third Reich this practice, contrary to former usage, is incumbent on the counsel for the defence. To put the question is to answer "no." As prisoner number 6 I felt I had a clearer conscience than any one of the State attorneys, judges or lawyers who contribute to the conviction of innocent men.

However, the suspicion that I might commit suicide started me off on a remarkable train of thought. Though I continued to hope to regain my freedom I had to reckon with the possibility of a long imprisonment. Meanwhile almost anything might happen to me. The reports about the concentration camps of Columbia and Lichtenburg sounded very alarming. How should I react to ill-treatment and other torments? My temperament was not adapted for taking things lying down. I calmed myself greatly by deciding that if it came to the worst I should be master of my own fate. One morning I picked up a razor blade from the floor of the toilet, quickly stuck it in my pocket and hid

it like a treasure in the straw of my bed. It was a great comfort to know that it was in my power to escape the plans of my oppressors.

There was a rule against smoking or having reading matter. It was possible to gain permission for these, but this usually took a week to obtain, and most of the inmates were removed elsewhere during that time. It was harder to obtain permission to buy one's own food from the canteen.

At first I decided against trying to procure myself these privileges. I wished fully to experience the effect of this life which the countless poorer people who have no one to help them have had to endure.

From the fourth night on the light in my cell was put out. The days were almost as bad as the nights, shut up in that hole in the cellar except for short intervals, early in the morning and at noon and night. My wife was allowed to visit me two or three times a week for ten minutes, which meant nearly a half-hour break, as I was led upstairs for the purpose. I had an occasional visit from my substitute or my secretary, but apart from that things at my office had to get on without me. I was cut off from life.

The prisoners were supposed to exercise an hour in the courtyard every day. I was only permitted to do this once during the first days, later on more often. The warder opened the cells and we had to walk over to the opposite side of the corridor and turn round. Besides the warder there were always three orderlies present, one with a rifle and the others with pistols. Then—always three paces apart—we marched through the warder's waiting-room into the prison yard. We walked in a circle behind one another for an hour. I felt as if I were living in Vincent van Gogh's famous painting, "In the Prison Courtyard." But in spite of the seriousness of our situation the picture we presented did not seem so grey. The yard was shut off from the trees and lawns of the big garden of the former palace of Prince Albrecht of Prussia by a high wall which had bits of glass and wire let into it to prevent escape.

In the yard itself were still the remains of trees, bushes and lawns. Nature's richly-coloured growth had sprung up through the traces of the trampling feet of soldiers, prisoners and policemen. Best of all the sun shone and shed its rays upon the spring green of the young leaves and upon the heads of the men, who, guarded like desperate criminals, trotted around, while jazz music floated from the roof garden of the Europa House at the Anhalter Station.

Three firearms and a wall cut us off from life. The ten prisoners ran ever faster. The foremost kept up a good pace and seemed desirous of tramping upon his anger. Eight prisoners were left in their cells and would exercise the next hour. Otherwise it was feared that we should become too well known to one another. Of the ten in my group there were three lawyers, a former very high government official of the Weimar Republic, a Catholic Prelate, an Evangelical Pastor, a "Bible-seeker," a Frenchman and two Communists.

While we exercised SS officers of the Gestapo stood in the beautiful broad windows of the second and third floors. They made spiteful remarks about us and threw their cigarette butts at our heads. A great fury arose in me, but as we turned a corner two of my fellow-sufferers warned me, each in his own way. The Evangelical Pastor caught my eye and shook his head with a kindly smile. One of the Communists, a Rhinelander, signalled me that "if we didn't watch out, we'd be the worse for it."

I heard by chance that Thaelmann had been in the Gestapa Cellar about ten months before, and—curious coincidence—also in cell number 6. Everyone spoke with admiration of his behaviour while here.

Teddy—as he was called—had been ill-treated, though not in the Gestapa Cellar. This was known abroad and led to attacks in the Press. One day Göring appeared unexpectedly in the prison and had Thaelmann's cell opened. He asked him if he had been ill-treated. Teddy said no. Thereupon he was asked to sign a statement that

the rumours about his ill-treatment were contrary to the truth. He refused. Göring flew into a rage, as he did not know how he was to explain the refusal. An unusually clever man in his suite suggested that Teddy be undressed in order to see whether there were any signs of his having been maltreated. If none were found, his refusal to sign would have no importance.

They undressed Thaelmann against his will. His back and buttocks showed unmistakable signs of cruelty. When asked to explain his behaviour, he said : " Those who ill-treated me had orders from above. I refuse to have them sacrificed for those who are hiding behind them."

Every society develops its own laws. The more we were cut off from the outer world and thrown in upon ourselves, the stronger grew the feeling of a common fate, and a wonderful comradeship arose. This kept me from despairing of my fellow-men during those first weeks in which I was shut up alone almost continuously day and night.

Men I had hardly or perhaps never seen would seize the opportunity when my cell was open to lay a flower, a newspaper or a cigarette in a place where I should be sure to find it before it was discovered by the warder. I also received hints as to how to conduct myself, as my position grew more threatening.

My failure to give the Hitler salute, for instance, was a source of intense displeasure to my jailers. I was urgently advised in secret next time I was taken upstairs to give the Hitler salute smartly, even to my wife, or else her visits might be forbidden. In order to avoid such a contingency I decided to adopt this suggestion. When I greeted my wife on her next visit with a loud " Heil Hitler," she was so astonished that she dropped all her parcels on the floor. When we picked them up we were able to bring our heads near together, and I quickly explained the situation to her. After that we always greeted each other " properly " when we met in the prison.

It is hardly possible for the outsider to imagine in what

a state we lived shut up in that cellar. There was a continual craving for bread and cigarettes. Every crust of bread, every cigarette end was eagerly cherished. There were often more than seventy prisoners at a time who had been brought from concentration camps and who were compelled to wait in the entrance room of the prison, in the adjoining guardroom and in the cell corridor. They frequently had to wait all night before being taken before the authorities, and were forced to do exercises and other hard physical labour under the surveillance of boys between 18 and 20 years of age who belonged to a South German SS troop, and were especially trained for this slave-driver's job.

Two of these boys were suddenly locked up with us, as they were suspected of having helped two prisoners in Columbia House to a successful escape. One of them tried to curry favour with the Gestapo by informing on us, in spite of our comradely treatment of him. We showed our contempt of his behaviour by word and action.

Our food was brought in special containers from Columbia House and was stored in the corner near the toilet. For the sake of my digestion, and with the desire to return the kindnesses of my companions and to help the newcomers over the first hard days, I finally decided to put in a request for my own food and for reading matter. Most of the prisoners were not willing to do this as many of them had not lived to receive the answer, and naturally this had given rise to a superstitious feeling about it. I must admit that I myself was not free from it when two days later I was informed that I was to be transported the next morning to a concentration camp. I was terribly depressed. The reports from Columbia House did not sound reassuring. It was an open secret in the cellar that a harsh commander there had whippings carried out before the whole camp almost every week. In the course of six weeks there had been three "suicides." It was much the same in Lichtenburg.

That night was terrible. Sleep and quiet were not to

be thought of. Nearly a hundred persons, men and women, had been brought in from the night clubs, in which they were supposed to have aroused feeling against the Government by jokes and songs. They had to remain until the next day, and in their excited state made a fiendish noise, in which inmates of the cells joined. Had the presence of so many persecuted people suddenly loosed usually cautious tongues? From many cells shouts of refreshing sincerity could be heard. Amid roars of laughter the news went round that among the prisoners was one of the State Attorneys, who—so he declared—had only been in such a place for the sake of scientific investigation. Since the new arrivals were not allowed to use the toilet, indescribable scenes took place, the signs of which had to be cleared up the next morning.

It was impossible to keep healthy on the food provided. I have normally a sound digestion, but it proved unequal to the strain placed upon it by the so-called vegetable soup, consisting of uncooked barley, peas or the like, and every meal was followed by hours of racking pain. It was useless to call with the "pointer." Gradually I learned to use the spittoon, but the cleaning up next morning gave rise to disagreeable discussions with the usually reasonable warder, as I insisted that such needs must be attended to.

In the morning of the following day I was informed that my removal had been temporarily postponed. I should shortly be summoned to appear in court. Surprisingly enough twenty-four hours later I received permission to read, smoke and buy my own food.

All the others rejoiced with me. I was given five marks from the money that had been delivered, and I felt like a king as I offered cigarettes to my companions out of a full package.

There was talk of pardons and extra food on account of Göring's wedding. An experienced inmate said at once: "He feeds nobody but himself," and he was right.

Towards the end of April I was handed the following warrant :

PRUSSIAN SECRET POLICE DEPT.
DEPUTY CHIEF & INSPECTOR —II 1A1 BERLIN, 10*th April* 1935.

All communications must bear the above reference

To
MR. Attorney and Notary
DR. ROETTER,
GESTAPA PRISON.

According to paragraph 1 of the Presidential Decree for the Protection of the People and the State of the 28th February 1933 (RGBL. I. p. 83), I hereby order you to be taken into custody until further notice, in the interests of public security.

Reasons.

For behaviour damaging to the State and the formation of a connection with the Thaelmann Committee of Paris. Since it is probable in view of the facts of the case that you are continuing such damaging behaviour, you will be taken into protective custody for the sake of the safety of the State.

per pro.
(Signed) HEYDRICH.

The receipt I had to sign was also dated 10th April. I wished to alter the date in accordance with the facts. The official remarked sneeringly that I would only make my position worse, since the reconsideration of the papers with the aim of an examination for eventual release would not occur before the lapse of three months after delivery of the warrant. As I then replied that the date of my

arrest, the 28th of March, should be used, he said meaningly : " In the concentration camps they only consider the possibility of a release after nine months or a year. Would you prefer that ? "

My behaviour in Paris, which was called " damaging to the State," had consisted in the fact that I had taken advantage of a visit in connection with another case to discuss with the representative of a French barrister the best possible ways in which to help Thaelmann. This barrister belonged to one of the " bourgeois " political parties, and is now a minister.

(*b*) *The Court of Honour* :

It was remarkable that in spite of the strictest watch the most secret things became known, as if the stones could hear and speak. Thus it was reported to me that in view of my hitherto unquestionable " national reliability " and of the facts of my case a prosecution was considered neither possible nor desirable, but that I was to be disbarred in proceedings before a Court of Honour, and that I was to remain in custody until the Thaelmann Case was ended.

That would have meant lifelong imprisonment for me, for I was convinced—and as the time has gone by it has been confirmed—that the Thaelmann Case would never come up, since it could only result in proving Thaelmann's complete innocence.

The first part of the secret message soon came true. I was given but one week's notice of my trial before the Court of Honour of the Berlin Bar Association. During that week came the Easter Holidays which made it still more difficult for me to arrange my defence. The breach of professional duty alleged against me consisted in my not supplying the information demanded by the State in a political case of exceptional importance. At my wife's request I decided to have a legal representative. That sounds very simple. But what was the situation ? My wife now suffered the same fate as Frau Thaelmann. Certainly she met everywhere with warm sympathy and personal

kindness, but behind these were evasions nevertheless and the refusal to undertake my defence. Many colleagues frankly gave as a motive anxiety over their own fate, and these were not bad men. In desperation my wife at the last moment went to a completely unknown lawyer who had been recommended to her and who had come out unscathed in several cases of defence in the Third Reich. This result—as his handling of my "defence" later convinced me—was due solely to his power of adaptation to the ideology of the National Socialist "idea of justice." I found out later he had had an interview with the court before the trial opened in which he had explained that he was not in agreement with my views. He asked the court to advise him whether to give up the defence at the last moment or, in order not to leave me in the lurch, to go on with it without saying anything to me about his "scruples" or this interview. Otherwise he feared to deprive me of my "equanimity." The latter alternative was chosen. Having without my knowledge excused himself from all responsibility my lawyer carried through his task to the foregone conclusion of complete failure. He took care not to infringe upon the National Socialist thesis that the lawyer who puts his client's case identifies himself with him. There may have been a slight doubt of the truth of this thesis in the mind of my "defender." At any rate it would explain his later refusal to take the fee agreed upon.

On the morning appointed for the trial an automobile took me to the court building. Two Gestapo officials accompanied me. I entered the hall as the accused where so often I had defended my colleagues. Five lawyers, true National Socialists, had been named as my judges. The proper chairman, unfortunately, could not conduct the sitting, as he also was in the Gestapa Cellar at the time. It irritated me beyond measure that behind the heads of the judges a huge clock was visible which bore upon its dial a head of Hitler at least twice the natural size. The lawyer, who was acting as reporting judge, was one whom I had reproached only a few weeks before for unprofessional

behaviour because he had tried to induce a client of mine to agree to divorce her husband in return for 1000 marks. I was suffering from such a headache that I could not follow the proceedings, and felt wholly unfit to do so. The court refused a medical examination. Overwhelming bitterness arose in me over my shattered life and the thought that lawyers could so betray the highest ideals of our profession and lend themselves to such servitude while the words " honour " and " truth " were constantly in their mouths. The inadmissible confiscation of all my professional papers, together with Thaelmann's letters to me from prison, was ignored.

The Prosecutor was quite frank—to be sure, the proceedings were held " in camera." " In the Third Reich," he submitted, " a lawyer who voluntarily decides to defend a Communist, must lay aside his robe, no matter how spotless a career he has behind him." My fate was decided, even though I had a legal right of appeal, which I immediately exercised in spite of the attempts of the Gestapo to dissuade me.

One of the Gestapo officials took advantage of the return trip back to the prison to trap me with apparently harmless questions. He considered my present state of mind especially suitable to get a " confession " out of me. I had already often been irritated at this man, because he took pleasure in withholding the food which my wife sent to me for days at a time so that when I finally received it it was spoiled. Now I angrily accused him of this.

Now followed days of severe interrogation. They put cuttings of unnamed newspapers before me and demanded how this information had reached the foreign press. My reply that the only possible source was either the Gestapo or the Court was not taken very pleasantly. In any case it was no recommendation that foreigners should take an interest in me. It gave me, however, a certain feeling of security.

The interrogations lasted so long that I had leisure to look about the rooms a little. On the wall hung tables and

statements about the Soviet Secret Police. Suddenly my eye fell upon a letter which lay on the official's writing table. I read without surprise the application of one of my stenographers for the positions promised to her and one of her colleagues in return for their evidence against me. They both got their jobs and I had to provide them with references !

The next Sunday I had a joyful surprise. My three boys visited me. They were allowed in my cell. My second boy brought me a puzzle which helped to lighten many heavy hours. As the cell made the youngest one feel uneasy we were permitted to spend half an hour alone in the prison yard. Even the orderly with his pistol was more friendly and chatted with us about the many trifles that make up the world of the soldier and which immediately spring to mind when one hears military music or begins to talk with a soldier.

(*c*) " *Honourable Political Custody* " :

My wife in the meantime had not been idle and through endless negotiations with every sort of official had arranged that I should have a medical examination to test my fitness for imprisonment. They had also promised her that I should have every possible privilege.

But the same official who always allowed my food to spoil, saw to it that I waited several days before being classed as an " honourable political prisoner." This meant that my cell was only locked at night and that during the day I was allowed to visit other prisoners with a like privilege. We were also permitted to wear collars, ties and shoe-laces and could walk in the yard every day. I moved into cell 16 which was a little wider. I only learned later that it was Gregor Strasser's death cell. He was shot from behind and on the wall could still be seen the marks of the bullets.

My ill-health prevented the proposed removal to a concentration camp. After about five days some sort of

military doctor came, who examined me hastily with all my clothes on and announced that I must be taken to the hospital of the Prussian police in the Scharnhorststrasse for observation and examination to test my fitness for imprisonment. The fees were to be eight marks daily, which I was to pay. As there was always the hope of release because of unfitness and the alternative was the concentration camp I agreed to go. It was some days, however, before I was actually removed. Then I had to say good-bye.

I learned something about the diversity of mankind in the various ways of bidding farewell. It was hardest for the Communists, as they had the worst punishment to expect. But they were upheld by the strongest faith. "I have twelve to fifteen years of penal servitude to expect," one of them said to me; "if I knew I had to serve out the sentence I should make an end of myself. But I believe that the times will change and I shall regain my freedom."

There was a terrible happening the last night. During the afternoon a prisoner on the fourth floor—I will call him Herbert—was badly maltreated by Gestapo officials. They hit him on the arm with rubber truncheons so hard that both the ulna and radius were broken. He also bled from flesh wounds on the head and back. That night he had screaming fits and it appeared that in desperation he had hidden a tin spoon which he had broken into pieces and swallowed so as to force his removal to a hospital, a plan which displeased the officials; they wished to treat the broken arm in the cellar so that no news of it should leak outside.

The following morning I tried to encourage Herbert as I said good-bye. I left in a magnificent open car, sitting behind with my baggage. The chauffeur wore an SS uniform and beside him sat a plain-clothes escort. The car had a police siren and an SS pennon. As we drove swiftly over the Potsdam Platz I felt suddenly ashamed at the thought that passers-by might mistake me for a National Socialist high official.

(*d*) *A Prisoner in the Police Hospital :*

My admission into the hospital went fairly quickly. It was a beautiful old building with new additions for the Prussian police. On the second floor was a section for criminals and political prisoners to which I was taken.

All the patients had to wear the hospital dress. Prisoners had a red stripe on the left arm. I was given a tunic without such a stripe.

I was taken immediately to see the head doctor before moving into my new quarters. He examined me thoroughly and diagnosed extremely high blood pressure, which explained the frightful headaches from which I had been suffering for weeks. He ordered me complete rest and a further examination in the near future.

The prisoners' section consisted of six rooms separated from the hospital corridor by a locked grating. In the first room sat two men of the old " blue " police who kept guard in twenty-four hour shifts. Four other rooms were set aside for sick prisoners. The sixth had washing arrangements and two toilets with doors. There was one single room with, however, the disadvantages that one wall consisted entirely of bars in order to let in light and air and that it was on the way to the toilet. Another room was for two men and the remaining for more than two. I was lucky enough to be put into the room for two so that I had to put up with only one man's constant company.

I was very cordially welcomed by the other prisoners, who immediately warned me that the other man in my room was a spy.

My cell was a high, brightly-painted room. Against the wall a short distance apart stood two white, iron beds with clean linen. The window was barred but not so as to shut out the view. There was room enough between the iron door and the beds for one to walk a few paces up and down. The door was supposed to be constantly locked, but it had to be opened so often for doctors, male nurses and other persons of the staff that it was left ajar most of the time.

(*e*) *Fellow Prisoners :*

By the doctor's orders I had to remain in bed with an oil compress on my head. The bed was wide enough for me to stretch my arms out sideways. What a relief ! My cell-mate lay in bed too, ostensibly suffering from pneumonia. We greeted each other formally as if at a party, bowing and giving our names.

We started a conversation. Although he was a detective-inspector of the State Police he did his job very badly. His remark that he had been arrested for ill-treatment of political prisoners would of itself have put me on my guard, even had I not been warned beforehand. He was let out after a few days and I congratulated him in anticipation of his inevitable promotion.

Shortly afterwards his place was taken by a National Socialist with a gold party badge whom I had already met in the Gestapa Cellar. Herbert was presently brought in also for treatment for his broken arm and for special diet and treatment to get rid of the bits of spoon he had swallowed.

Herbert was delighted to see me and confided his life story to me. The third son of a war widow he grew up in a Saxon town on the Czecho-Slovak border. He owed his existence to the last leave of his father, who fell in 1917 on the western front. His youth had been rich in privations, in spite of which his body gave no impression of weakness except for very bad teeth. He was completely uneducated. In a vain search for work he had fallen into the hands of a Gestapo official of his native town who bought his services as a spy for three Reichmarks.

How much spying, if any, Herbert had done I could not discover ! He broke down several times and blamed himself for being so terribly depraved. He should so much like to learn and go to work properly. His political views were a chaotic mixture of National Socialism and Communism.

In April 1935, the idea occurred to him that he might

utilise the Gestapo official's desire for news to make money by a trick. He reported that he was on the track of a plot to murder the Führer on the national holiday, 1st May 1935. Herbert had failed to foresee the consequences of this information. To his joy he immediately received ten Reichmarks but was pressed on the following days to make further reports on the plot. The Gestapo sent men from Dresden and Berlin, and Herbert was forced to meet these three men constantly. In this predicament he thought up the wildest stories and finally recounted that he knew the time and place in Berlin where the conspirators were to meet. Whereupon the three officials travelled with him to Berlin and there, after waiting in vain on the street and in cafés, he was compelled to confess to the hoax.

Herbert was put in the Gestapo Cellar and beaten every day by the three officials with kicks and blows with rubber truncheons.

It must be admitted that Herbert's foolish trick had earned him a reproof. But who had lured him while still a boy into the dirty business of police spying ? Besides he was beaten, not for the wrong he had done, but because he had disappointed the officials in their hopes of distinguishing themselves.

To my horror I learned that Herbert's was by no means a unique case. Two other sick spies of Göring's and Himmler's " special service " were in the hospital. Every important man of the National Socialist party has his own staff of spies, who keep an eye on their " friends " and work to ferret out counter-espionage. If it comes to a quarrel, and the Nazi leader is not strong enough to overthrow his rival through his influence with the Führer, he works off his rage on the spies. These two spies—old members of the party—had for this reason been in " protective custody " for more than a year and had not been brought up for trial. They knew many secrets and were familiar with the private lives of those new " leaders " who constantly raged against the immorality of the old régime, and never tired of demanding the reawakening of German morals. One

of them, who was a technician, told us about the arrangement in the Prince Albrecht palace in the park of the Gestapa building for tapping the wires of the highest functionaries of the state and the party and listening in on their telephone conversations, thus keeping check on them. By this means Himmler, who was the first to receive the reports, gained immense and dangerous power, which he used ruthlessly. I saw him and his right-hand man, Heydrich, while in the Gestapo prison. It was hard to imagine that these faces had ever been caressed by a mother's hand.

One spy was homosexual, the other a Don Juan. They both claimed that if only they were free, they could immediately have me released and re-admitted to my profession. Was there a grain of truth in what they said?

One of them suddenly became hopeful of finding favour with Himmler, who would very shortly need him for a special job. As a matter of fact he was released soon after and the following day appeared in a magnificent car with an SS flag and chauffeur and handed out cigarettes to us. He was suddenly swimming in money. Before his departure we had discussed how men happened to get started on this adventurous career. It was always the same story. Their homes had been broken up either because their fathers had been killed in the war, or had been unable to find jobs in their old profession or a new one. They had learnt nothing useful in school, because they were so early drawn into politics. This also had prevented them from preparing themselves for a proper calling. They justified themselves by referring to friends, who in spite of their training had later found themselves unemployed. There was much idealism and love of adventure in all of them. They devoured detective stories and they showed me a book in which the fate of all the great spies of the World War was related. I accidentally opened it at the story of the Englishwoman Edith Cavell and read her last words before her execution: "Patriotism is not enough—I must have no hatred or bitterness for anyone."

I pointed out the difference between such a point of view and that of National Socialism. There was a dead silence. Then one of them said that I ought to write that to the Führer. It would be easier for them to follow what Hitler believed. " And have your own consciences nothing to say ? " I asked. They looked at me in astonishment and said nothing.

My new cell-mate had been to a University and until a year before had held high office in the party. He had relentless enemies among his fellow-members, who prevented a reconciliation with Hitler. His wife was also an " old campaigner." He was very bitter. Regularly every day each of us had his " bad quarter of an hour," in which our fortitude threatened to give way. We did not notice it in ourselves individually but only in each other, and we learned how to help one another over the bad moments in a friendly way.

But one night he broke down. I was the unconscious cause. We were both lying sleepless that night of early summer and I suggested : " We might kill time if you would explain to me the National Socialist philosophy."

To my amazement, he began to sob loudly, hurling curses at me and accusing me of wounding his deepest sensibilities. " I can't lose my belief in Hitler," he groaned, " I can not. I will not. They can deny me everything else, but he must remain true, he must. You don't know what he has meant to me all these years. If I lose my faith in him, what remains to me in life ? "

Then I knew that he had lost his faith in the Führer and did not have the strength to admit it to himself. In that moment I did not dare trust to my instinct for handling men, and I feared to upset him further. Nevertheless, I had the feeling that it would be better for him if I pressed him ruthlessly to recognise the truth about himself. I began to speak cautiously about the saying of the Greek philosophers : " Know thyself," and pointed out that many a man comes to curse what he once worshipped, but I felt too miserable in body and soul to stand another scene. So

we both went to sleep worn out, and behaved later as if nothing had happened.

Visiting me in the hospital was a trying experience for my wife. On the day of the visit she had to get a written permit from the Gestapo and take it with her to the hospital where she had also to obtain the permission of the doctor. It depended entirely on the mood of the Gestapo official whether the permit allowed me to see my wife alone. She often had to wait hours until the Gestapo agent condescended to arrive. It took an hour to go from our apartment to the Gestapa and another hour from the Gestapa to the hospital.

When my wife visited me for the first time in the hospital I was taking a walk in the garden. A heavily-armed blue-uniformed policeman was leading five of us about. People were looking at us inquisitively. I had had to change my tunic for one with a red band on the arm. Suddenly I saw my wife sitting on a bench waiting for me, as she was not allowed to approach us. I hated her seeing me in such a situation.

She was not permitted to speak to me until we were upstairs in the cell. My cell-mate kissed her hand. The officials in the Gestapa prison had often greeted my wife thus. It made us both smile.

The next few days were extremely disagreeable, as a repulsive Gestapo official had been brought in under the suspicion of having made a profit by falsifying accounts. He was fawningly friendly while trying to regain grace by spying out breaches of the prison regulations. Luckily we were soon rid of him.

One pleasant acquaintance was a soothsayer. In the year 1933, like many of his colleagues, he had made an unfavourable prophecy about the Hitler régime, on account of which he was imprisoned and had spent nearly two years in the concentration camp at Dachau. There he had been kicked in the stomach and the mouth by guards in hob-nailed boots. He showed me frightful scars which confirmed the truth of his statement, but which also prevented his

release. So he was sent from one hospital to another without any improvement in his condition. He could still take only liquid nourishment. In my hand he read speedy release, which cheered me although I am not superstitious. For the rest, not only the unfortunates whose bodies betrayed ill-treatment were detained in prison, but also those prisoners who knew too much about the conditions in the concentration camps. It was wisest therefore to appear as ignorant and indifferent as possible.

Subsequent medical examinations established my unfitness for imprisonment. This opinion was communicated to the Gestapo. There they prepared to set me free at once, but first they had to obtain the agreement of the Prosecutor of the People's Court, because of my connection with the Thaelmann Case. The young man who held this office would gladly have prosecuted me, if he could. He was away for a few days and my release was to await his return. But my wife did not relax her efforts. She found a lawyer whom she hounded into going to the Gestapo and to the Head of the Public Prosecution Department of the People's Court in Berlin. As the Gestapo finally refused responsibility for my further detention, the Head agreed to my release.

(e) Free again :

It is impossible to describe the feelings which overwhelmed me on that late afternoon of the early summer of 1935 when the doctor on duty accompanied by a Gestapo official brought the order for my release. Within five days I was to report personally to the Gestapo.

My fellow-sufferers rejoiced with me but at the same time were conscious of the uncertainty of their own fate. Would a release order smile upon them also, and when? My cell-mate was in a desperate mood. I tried not to show my joy too much, but the tension was unbearable.

As the room where my clothes were kept was locked the doctor recommended my sleeping that night in the hospital, but I implored him to search for the official in charge. It

took hours to find him. It was already twilight when I finally reached the street after those hard, hard months in prison.

I looked all about to see whether I was being watched. Then suddenly it didn't seem to matter. I hastened home and found my family in a state of great agitation. They had known for hours of my release, and could not understand why I did not appear. My wife's fear that something had happened to me was understandable in view of the fact that she could get no information either from the Gestapa or the hospital. She remembered cases in which prisoners after their supposed release had disappeared without leaving a trace.

But now I was at home and we passed a quiet evening with the children which relaxed a little the strain of the last months.

Under home nursing I quickly regained my health. At regular intervals I had to report to the Gestapo. Every such visit was a torture for my family until I returned safely from that ill-famed building. I was released from my obligation not to leave Berlin without leave, in order to spend a few days in Thuringia for convalescence.

(*g*) *Flight :*

I soon noticed that my life with only temporary interruptions was under constant observation, my telephone calls, my letters, my movements, my visitors were spied upon. So I thought it my duty to warn my friends and clients. In spite of everything my will to resist grew and I was determined to do my utmost to win a reversal of the decision of the Appeal Court of Honour.

But warnings from friendly and well-informed sources increased. Forces were at work that wished to destroy me even if I secured the reversal of the decision of the Court of Honour and were even attempting to have me reimprisoned. That I could not have endured. So I cautiously liquidated everything possible, regardless of loss. I applied for my discharge as attorney and notary and it comforted me to

think that under overwhelming circumstances I had at least withdrawn from my profession of my own accord.

No one knew of our preparations to leave home. We did not want to burden anyone with the knowledge.

In the autumn holidays of 1935 we sent our three boys to Scotland. Ten days later, as soon as we heard of their safe arrival, my wife travelled alone to London. At her request I did not see her off at the station. I stood on the street and saw the train cross the bridge over the Hardenbergstrasse to the Zoological Garden Station. We waved a last farewell to each other on German soil. Should we see each other again?

When I learned of my wife's safe arrival in London, I did not return to my apartment or my office. I spent three nights in hotels and then took the train to the Czecho-Slovak border.

On the platform in Dresden a telegram for Herr Pötter was being called. A man near me whispered that it was probably another fugitive whom they wished to catch. Two days before he had seen a man apparently calling out a telegram and then instantly arresting the woman who claimed it. A railway official went through the train and repeated the name. Was it a typographical error? Was it meant for me? I held the newspaper before my face and pretended to be absorbed in my reading. The train started. I reached the station from which I intended to cross the frontier. I did not dare to cross it as a regular traveller with a passport. As twilight came I climbed into the mountains. After perhaps an hour's wandering I found myself on the other side of the frontier. I looked back towards my German homeland and knew that I carried in my heart the best that she had to give.

CHAPTER II

THE THAELMANN CASE

A. Why I Defended Thaelmann

(*a*) *A Visit from Frau Thaelmann :*

On a day in the late autumn of 1934 the wife of the Communist leader, Ernst Thaelmann, came to my office, to ask me to undertake the defence of her husband. I was forced to make a fateful decision.

Before Hitler came into power no " Nationalist," that is, Conservative, was ever asked to defend a Socialist or Communist, since there were plenty of lawyers available with similar political opinions. But now a woman stood before me in the direst need, asking for help in the name of decency and humanity. Could I refuse her, because her husband held Communist views ?

People had advised her to apply to me, who were familiar with my activities in various political trials during the Weimar Republic. At that time it happened that certain political adherents of the right-wing party had been prosecuted for breaking the law. I had defended some of them with success, because I was undisturbed by the heated political feeling of the time and was thus able to put the rule of law before the exigencies of politics.

This woman showed an admirable spirit as she said : " There are no longer any Socialist or Communist lawyers. Have any of you Nationalist lawyers got the courage to help my husband to obtain justice ? " I should have felt overcome with shame if I had said " No." For conscience sake I felt forced to give an affirmative answer.

(*b*) *Thaelmann the Man :*

In the following months I gained insight into a world hitherto almost unknown to me ; and at the same time I was strengthened in my conviction that I was doing my duty. I studied Thaelmann's fight, the fight of the workers for social justice. I came into contact with men who were living a life of self-denial and carrying on a fight for freedom. I was shocked to find that thousands of men and women, living quite close to me, were suffering in a way I had not sufficiently realised. I learned to understand how little charity can help and how shameful mere pity is where just claims demand fulfilment.

While working on the case, I had occasion to read Thaelmann's letters and articles, which, along with the conversations I had with him, helped me to understand the man.

He was born in Hamburg on 16th April 1886. After leaving the primary school he worked until he was sixteen in his father's little coal and transport business. From 1902 onwards he took on various jobs at the docks, going to sea as a stoker. In October 1906 he was called up to the infantry-artillery at Cologne, but was discharged in the spring of 1907, because he was suffering from rupture. Called up again, 14th January 1915, he was drafted to the Western Front, where he fought until the Armistice, taking part in the fighting in the Champagne country and on the Aisne and Somme. He was twice wounded, and was awarded the Iron Cross (2nd Class), the Hanseatic Cross and the Wounded Soldier's Medal. He was demobilised in the spring of 1919 and worked at the Hamburg Docks until 1924. He has a daughter, who was nineteen in 1938.

At the age of seventeen he joined the German Social Democratic Party, and shortly afterwards the German Transport Workers' Union. He became a member of the Hamburg Local Council and later also a delegate to the Hamburg Trades' Council. He was especially influential among the youth groups. In recognition of his services to

his trade union, he was presented with certificates by his comrades.

After the 1918 revolution, he joined first the independent Socialists (USPD), then the Spartacusbund, out of which the German Communist Party (KPD) was formed. From 1919 on he was a member of the Hamburg City Council, and after 1924 he sat in the Reichstag until his arrest; 1925 saw him representing the Hamburg District on the Communist Central Committee, and later he became its chairman. Three times, in 1925 and 1932, he was candidate for the Presidency of the Reich, and obtained about six million votes.

People ask with particular interest what Thaelmann said and wrote to me. But I cannot give any details, as it would amount to a breach of professional confidence, which might afford the National Socialists cause to revenge themselves on Thaelmann. With regard to the prosecution, the situation is rather different; for the indictment has been published outside Germany.

I shall never forget Thaelmann as I saw him in the Moabit Remand Prison in Berlin. Clad in a blue suit, he was broad-shouldered and of medium height, with a powerful head, thin fair hair, big blue eyes and a clean-shaven face. It was evident that he was of Frisean descent. His bearing was dignified and courageous, his speech unfaltering, even in the presence of the examining magistrate.

Here was a man fighting for his honour as a member of the working class, against the misrepresentation of his thoughts and aspirations. He openly declared his political inclinations, and was eager to prove in open court that he and his fellows were not the common criminals that they were made out to be. This desire pushed everything else into the background, including the ill-treatment to which he had been subjected.

Like Hitler, Thaelmann is a man of the people, but his attitude towards them is completely different. Hitler despises the masses. He holds the vast majority of them to

be stupid, lazy, cowardly and effeminate, and thus considers them to be a suitable instrument through which to rule mankind. He aims at blind obedience, and to this end wishes to force all sections of the nation into one mass, the members of which are to be prevented from exercising independent thought.[1] Adjusting his propaganda to a level such that even the dullest can understand it, he hammers his ideas unceasingly into the minds of the people.[1] He is not concerned with truth and falsehood, humanity and justice. The essential point is the regular repetition of the same slogans, combined with the unscrupulous use of brutality and terror.[1] For Hitler is convinced that the masses will bow down to brute force, and prefer a fanatical creed which allows no opposition to a " liberal " freedom which they do not know how to use.[1] They remain unconscious of the shamefulness of their " spiritual terrorisation." [1] Mass-meetings are the most effective form of propaganda ; all are affected by their " magical influence," and in the " delirium of mass-suggestion " any remaining doubts as to the correctness of the new teachings disappear.

In contrast to this, Ernst Thaelmann was fired with an unshakable belief in the creative abilities of ordinary people and in their capacities for development. This belief characterised his whole being and made him act with honesty and decision. He fought against all attempts to stupefy the people. On the contrary, he wanted them to learn to take their fate in their own hands and to refuse to be the passive object of measures of repression. He realised that an insight into the significance of the changing times could only be attained by the people through a greater power of judgment, to be gained by education.

The famous German primary school (*Volksschule*) had proved as usual ill-fitted to develop this quality, and he had no opportunity to gain a higher education. However, he gave a good example to his comrades by educating himself. The study of works on scientific Socialism is in

[1] Hitler, *Mein Kampf*, pp. 44, 89, 197, 200, 201, 384, 510, 536, 652.

itself a training for the mind, as the National Socialists very well know. As they are unable to refute the arguments contained in these works they hope to do away with them by stamping their use or possession as treason.

Thaelmann was also in favour of meetings ; but to him the most important thing about them is free discussion which should go deeply into the subject-matter of the speeches and give a new stimulus to both speakers and listeners.

In this way he also hoped to bring to light the creative ability in the masses, which would enable them to form themselves into working units.

One may question the correctness of his political views and his efforts to develop them. They are only relevant here so far as is necessary for the understanding of the facts. The issue to be decided is not whether those views were correct, but whether in presenting them Thaelmann committed a criminal offence.

It is impossible not to admire him as a man. The problems he set himself, the way he tried to solve them, the sufferings he had to bear, developed his character and broadened his spirit.

B. Political Bogies and the Criminal Law

(*a*) *The Arrest of an Immune Deputy for setting fire to the Reichstag :*

On 1st March 1933 Göring made an important speech over the wireless, in the course of which he said that literally tons of documents had been discovered in the Karl Liebknecht House in Berlin, proving beyond doubt that the KPD, under Thaelmann's leadership, had set fire to the Reichstag as the signal for an armed uprising.

On 3rd March Thaelmann, who up to then had never been convicted, was arrested by the political police on this charge. He should have been remanded by a magistrate

within twenty-four hours, but this did not occur until more than two months later, on 23rd May. The indictment was not drawn up until 17th December 1934, twenty-one and a half months after the arrest, and was not communicated to Thaelmann immediately, but only on 19th March 1935, after three months had elapsed.

How can this be reconciled with the following quotation on National Socialist legal administration? :

> " Both prosecution and judgment must be speedy and sharp. The effect on the criminal as well as on the public is lost, when months and years go by before a wrongdoer is punished. Judgment must follow on the heels of the crime." [1]

Even if Thaelmann had been guilty of treason his arrest and the magistrate's order for his detention would have been illegal. For he was a member of the Permanent Committee of the Reichstag, which after the dissolution of the old Reichstag retained all the rights of popular representation until the meeting of the newly elected Reichstag, including the right to immunity of its members. Without the permission of the Committee, he should have been neither arrested nor summoned for investigation, since he was taken " neither in the act of committing an offence nor within twenty-four hours thereafter." [2] The immunity of the Reichstag deputies was affected neither by the Emergency Decrees issued by the President of the Reich nor by the measures passed by the new Government. This is clear from the National Socialists' Law of 23rd June 1933, which empowered the President of the Reichstag under certain circumstances to act in place of the Reichstag Committee or the full Reichstag and grant the requisite constitutional permission in the case of proceedings against deputies. The Attorney-General of the Reich [3] himself gave

[1] Ministerialdirektor Dr. Crohne, in Gürtner-Freisler, *Das Neue Strafrecht* (The New Criminal Code), 2nd edition, 1936, p. 156.

[2] Article 37 of the Constitution of the Reich.

[3] *Oberreichsanwalt.*

as his only ground for denying Thaelmann's immunity, that the Communist seats in the Reichstag had been abolished from 31st March 1933.[1] So that even under National Socialist "law," Thaelmann had immunity until that date, not only as a member of the Reichstag, but also as a member of the Hamburg Corporation. As to the legality of the proceedings *before* 31st March, the prosecution remained silent. Quite apart from the question as to whether the Co-ordinating Law [1] (*Gleichschaltungsgesetz*) was constitutional or not, it is very doubtful whether the loss of immunity could apply retrospectively to the time before the loss took place.

Against the Attorney-General's contention, it should be remembered that the law of 31st March did not declare the election of Thaelmann and his political allies invalid, but merely forbade the allotment of seats to them.

The indictment against Thaelmann and the other official documents in the case occupy altogether over thirteen volumes with more than a hundred exhibits ; but they contain absolutely nothing about the Reichstag fire or any other terrorist act. From this can be seen the untruth in Göring's speech, and the false grounds for the "legal measures" which were taken on account of the Reichstag fire for "defence against the danger of Communist attacks."

In February 1933 the political situation was still by no means favourable to Hitler. Only the elections to be held on 5th March were to secure for the "Government of National Resurrection" the necessary parliamentary majority. The situation had not yet reached the point at which the opposition parties could be completely prevented from carrying on an election campaign. Their exclusion from propaganda on the radio and in the streets only strengthened their determination to defend their constitutional rights by

[1] *Gleichschaltungsgesetz* of 31st March 1933. The name of this law is taken from the realm of electricity. Direct current must not be in contact with alternating current. On the contrary, the direct current must be changed into alternating current, or *vice versa*. Both currents must be equal (*gleichgeschaltet*).

means of their votes. Without some miraculous intervention the Hitler Government could never expect to have a clear majority which would enable them to dispense with a coalition with the Centre Party, the right wing of the opposition. The miracle happened; on 27th February the Reichstag caught fire.

It was now possible to deal first with the Communists, who were supposedly responsible, and then step by step to attack the remaining parties. The seven fundamental rights secured by the Weimar Constitution—security of the individual, inviolability of the home, secrecy of the post, freedom of speech, freedom of meeting and association, and security of property—were now suspended "until further notice"; in reality, for ever.[1] The penalties for treason and various other crimes were increased, and a number of previously legal acts were made punishable, including—as we shall see in a subsequent paragraph [2]—certain cases of incitement to strikes or general strikes.

From all this we may conclude that Thaelmann was arrested not only illegally, but also for a crime with which he had nothing to do.

(*b*) *General Strike becomes Treason:*

For three years the Reichstag fire served as a pretext for depriving Thaelmann of his liberty. The National Socialists make use of it *openly* even now, as a proof of their claim to have saved Germany from the Communist Revolution. As the *secret* indictment does not correspond with this, it tries to prove the danger of "revolution now overcome" by other means.

The indictment claims that the KPD, the Communist Party of Germany, whose leader Thaelmann had been since 1925, had for years set itself the aim of forcibly altering the Weimar Constitution and of building a Soviet Germany in its stead. It claims further that attempts to

[1] Emergency Decree of 28th February 1933 based on Article 48, paragraph 2, of the Weimar Constitution.

[2] See p. 60.

attain this goal through uprisings did not succeed. Therefore the KPD, particularly after its defeat in October 1923, had altered its tactics, which Thaelmann at various times explained and defended in public. The party retained its political goal, but rioting and disorder were to be discontinued. Instead, a comprehensive " ideological " influence was to be exercised over the masses, as well as over the police and the army, and the development of the crisis in the capitalist system was to be carefully observed and analysed. If this were done, a moment would arrive in the future when the crisis had developed to a point favourable for revolution and by this time the masses, especially the " majority of the working class," would have been won over. In spite of this there would not be a " hopeless situation " for capitalism, as it would not shrink from any measures of force to maintain itself. The attitude of the armed forces might therefore be a decisive factor. It was necessary to see to it that at the critical moment the soldiers should either refuse to obey orders, being unwilling to shoot their brothers, or should actually join these brothers. The " workers in uniform " must be made to feel that the KPD was interested in their welfare. The party must therefore protest against the hard conditions in the army and navy, and demand explanations of the numerous accidents, in which more than a hundred soldiers met their deaths. It was particularly necessary to make contacts with any opponents of the National Socialists among the police.

This "secret" information, produced for the prosecution by the Gestapo, could have been obtained in its essentials from any of the Communists' books, which could be bought everywhere at very little expense, until the National Socialists consigned them to their bonfires. It had been known to the Attorney-General's " special staff " for years and could not justify the three years that elapsed between Thaelmann's arrest and the drawing-up of the indictment. But the following allegations contained in it were quite new :

It was alleged that the psychological moment long awaited by the Communists when the crisis had developed to the point favourable for revolution had arrived through Hitler's advent to power. In order to defeat the " Government of National Resurrection " the Communists had called for a general strike. They knew that the new Government would neither permit such action on the part of the working classes, nor quietly resign, and that bloodshed would therefore be inevitable. In calling for strikes in spite of the altered political situation, the KPD directly encouraged armed uprising, with the object of forcibly changing the Weimar Constitution.

According to the view of the Attorney-General the agreement to revolt and the open incitement thereto is a proof of treasonable intent and therefore punishable,[1] even if the carrying out of the plot has not taken place. There was no strike between 30th January 1933 [2] and the arrest of Thaelmann.

Thus the Prosecutor confuses cause and effect. In his view, it was not Hitler who threatened a revolt, although he was preparing to set up the Third Reich in the place of the Weimar Republic. On the contrary, the danger of revolt came from the workers, who might try to prevent this action by adopting the defensive measures allowed them by the Weimar Constitution. Because the KPD was in favour of carrying these measures through, and because Hitler intended forcibly to prevent their taking effect—the Attorney-General took for granted that the KPD thought the hour for the World Revolution had come ! Thus he attempted to bring a bogie to life !

(*c*) *The " Boxheim Protocols."*

It is hard to reconcile all this with the attitude of the same Attorney-General when he was defending the Weimar Republic from Nazi treason.

[1] Paragraphs 83 and 85 of the old edition of the Criminal Code (*Reichsstrafgesetzbuch*).

[2] The date on which Hitler became Chancellor of the Reich.

In the autumn of 1931, at a meeting of a secret Nazi group held at a house called the *Boxheimer Hof* in Hessen, there was a discussion as to the steps to be taken, and the orders and regulations to be issued in the event of a "serious situation" arising. Among the leaders of the group was a jurist, Dr. Werner Best, who is now a "government director" of the Gestapo and acts as deputy for Himmler. A "preliminary order" to be issued for the Republic of Hessen by the future head of the Nazi Executive, "after the passing away of the supreme governing authorities and after the defeat of the Commune," was of particular interest. The governing authorities were to be replaced by the Storm Troops and other Nazi Party organisations. Any resistance was to be punished by the death penalty. Detailed regulations were worked out which were afterwards put into force in the Third Reich.

The Attorney-General refused to intervene, because he declared himself unable to refute the Nazis' contention that the documents in question were only intended to apply to the "hypothetical" case of a counter-revolution following the outbreak of a Communist revolution.

Although in the autumn of 1931 it could not be argued, even according to the Attorney-General's ideas, that the Communist Party thought the moment had come for World Revolution, it sufficed for the Nazis to camouflage their revolutionary preparations as counter-measures against a Communist revolution in order to ward off a criminal prosecution.

(*d*) *The General Strike as a Lawful Weapon in Trade Disputes :*

The attitude of the Attorney-General in prosecuting Thaelmann is the harder to understand, since a general strike, like any other strike, had until then been held to be a lawful weapon in trade disputes, and the prosecution was not in a position to show that an illegal use of this weapon was intended.

When, as a result of the collapse of 1918, the Government fell into the hands of the working classes, it became clear

that these had neither the strength nor the political training to put their ideals into practice. Much had been said and written as to the structure of the future Socialist state, but no one knew how the existing " bourgeois " state was to be transformed. So that the Socialist workers were soon compelled to work with the " bourgeois " parties of the Left and Centre, on a basis of parliamentary democracy. The disillusionment of the working classes over the failure to " nationalise " industry—for even the Socialist experts considered nationalisation to be impossible at that time, on economic grounds and those of foreign policy—was diverted by means of a series of labour laws. The most important of these were the Collective Labour Agreement,[1] the Shop Councils Law,[2] the Arbitration Order [3] and the Labour Court Law.[4]

In the Reich of Bismarck's time with its hostile attitude towards the newly-developing labour movement, there existed self-governing organisations for agriculture, industry, trade and the small independent handicrafts, but not for the ordinary wage earners. If the latter had been organised in the same way they might have made an organic and responsible part of the life of the State. As it was, there were constant currents of discontent among workers in those occupations, where distress and heavy economic exploitation were most felt. These were only countered by the creation by the State of welfare institutions. In this way arose compulsory social insurance of employed persons against sickness, accident, chronic ill-health and inability to work due to advancing age. The cost was met by contributions from employers together with deductions from wages. In the creation and administration of the insurance associations there was equal representation of employers and employees, but the Imperial Government was nevertheless desirous to prevent the growth of a fellow-feeling

[1] *Tarifvertragsordnung* of 23rd December 1918 as amended.
[2] *Betriebsraetegesetz* of 4th February 1920 as amended.
[3] *Schlichtungsverordnung* of 30th October 1923 as amended.
[4] *Arbeitsgerichtsgesetz* of 23rd December 1926 as amended.

among all the wage earners towards one another. Thus, the black-coated workers were provided with an insurance organisation separate from that of the workmen, and so encouraged to feel themselves superior to the latter. At the same time the different trade unions, with their varying political tendencies, were played off against each other.

Freedom of association and freedom of meeting were already guaranteed by the Constitution of Imperial Germany, so that the workers were able to set up trade unions for the protection of their interests. The opportunity for this was not, however, the same in all occupations. Among the agricultural labourers, for example, the large landowners were able to prevent combination with the help of decrees—the *Gesindeordnungen* (regulations for servants, etc.). Some trade unions claimed to be politically neutral, some were attached to political parties. In the latter case, the police attempted to treat them as political associations and so to keep them under control.

These difficulties came to an end under the Weimar Republic. Freedom of association for the defence and improvement of conditions of labour and the furtherance of economic ends was granted for every person and every occupation.[1] The organisations of employers and employees, together with agreements between them, were recognised by the Constitution.[2] The trade unions became of great importance, since the Shop Councils, elected by the workers, were subordinated to them. Over the Shop Councils stood the District Workers' Councils [3] and the "Workers' Council of the Reich," [3] from which members of the District Economic Councils and the provisional National Economic Council were appointed. In this way representatives of employers and employees sat together on one committee, which was required to scrutinise drafts of social and economic legislation before their presentation to the Reichstag. The tendency to curb political passions through co-operat-

[1] Article 159 of the Weimar Constitution.
[2] Article 165 of the Weimar Constitution.
[3] Provided for in the Weimer Constitution but never formed.

ing in common practical tasks was seen also in the regulation of labour disputes.

Just as civil law is based on freedom of contract, so that the parties are primarily bound by what has been agreed between them, and statutory provisions play only a subordinate rôle, so the regulation of conditions of labour was left by the State to the associations of employers and employees, to be the subject of free agreement between them. This was politically a relief to the Government, since the legislative machinery could to that extent be left undisturbed. The advantage for the employees consisted in the fact that the strength of their organisations did not depend on whether the corresponding political parties were represented in the Government. And the employers could hold the trade unions responsible, to the extent of their financial resources, for fulfilling the terms of the contract—which included the suppression of strikes not provided for in the contract. Instead of contracting with workers owning nothing but their labour-power, the employers were now dealing with unions which could use their organisation to hold their own members to their bargain.

The growing economic crisis disturbed the equilibrium between employers and employees. The balance had always tended to be in favour of the employers, who owned the means of production and controlled the giving of work, but in times of boom this was compensated for by the increased demand for labour. In times of depression agreements were no longer made, since the trade unions were not prepared to acquiesce in the reduction of wages. So the intervention of Government, originally intended merely as an auxiliary, became the rule in the years preceding the Hitler Government. While this saved the workers from a complete surrender to the employers, it could not prevent an ever-increasing reduction in wages. The Government issued emergency decrees, so that the labour disputes again became political instead of remaining within the legal sphere of tribunals set up for the settlement of such disputes.

But, however uncertain the position of the working classes during this period of development, they always retained the right to strike. In Imperial Germany strike-breakers were still encouraged, but not under the Weimar Republic. The misuse of the strike weapon was hindered by the provision that a ballot must first be held in the workshop, and a two-thirds or three-fourths majority of all the workers had to be in favour of the strike.

In July 1932 the first attempt was made to set the clock back more than sixty years. To make possible the dismissal of the Prussian Government of Braun, Severing and Hirtsiefer (made up of Social Democrats, members of the Centre Party and Democrats), President von Hindenburg and Reichs Chancellor von Papen declared a state of siege and transferred the Prussian Government's executive authority in Berlin and the district of Brandenburg to the military commander, who forbade any call for a general strike.[1] A few days later, success being assured, the ban ceased to be in force and the state of siege was declared to have ended. After the Reichstag fire, the issuing of pamphlets calling for a strike was made punishable if it served treasonable ends.[2] But even the Prosecution could not bring Thaelmann's case under this category, since he was arrested shortly after the decree was issued. During the period of his political activities, there was no law against a general strike or a call for one.

The leaflets issued by the Communist Party branches in Berlin, Thuringia and Breslau, between the time of Hitler's becoming Chancellor on 30th January and the general elections on 5th March 1933, support the view that the strike-movement had a political object—namely, the resignation of Hitler. But this did not make it illegal, for two reasons.

Firstly, the movement had as an object, of at least equal importance, the improvement of the economic position of the working classes, who had to bear the main

[1] Order of 21st July 1932.

[2] Decree of 28th February 1933. See p. 53.

burden of the measures taken to overcome the depression. The benefits paid by the industrial insurance associations had been reduced, while employers increasing their staffs within a certain period had been offered tax rebates with the right to give less than the standard rates of wages.[1] The workers were fighting against these measures introduced by von Papen.

Secondly, previous attacks against the security of the Weimar Republic had been successfully warded off by means of general strikes. In this way, the "Nationalist" Kapp Putsch of 1920 had been defeated, and the Cuno Government of 1923 had been forced to resign after causing untold evil with its gigantic inflation. In November 1932 the Berlin transport strike was called to force the resignation of Chancellor von Papen, whom Hindenburg still wished to retain, in spite of a vote of no confidence in the Reichstag on 12th September, when the unprecedented majority of 513 votes to 32 was obtained against the Government. Only the refusal of several Ministers, including War Minister General von Schleicher, to work any longer with von Papen, made Hindenburg change his attitude. The National Socialists had taken part in this strike in large numbers. The workers were therefore entitled to defend the Weimar Constitution and the advantages they obtained from it even against Hitler. In doing so they were not guilty of political abuse of an economic weapon.

(*e*) *General Strikes in "Nordic-German Law":*

The above statement of the law indicates that the Nazi legal system, unlike that of the Italian Fascists, contains no general ban on strikes; for otherwise incitement to strike would always be punishable, and not only in special circumstances. The National Socialist jurists refer to the "Nordic-German" law resurrected by Hitler as forbidding all individual freedom of action and thus giving no recognition to "basic rights."[2] From this it appears to

[1] Decree of 4th September 1932.

[2] Nicolai, *Race and Law* (*Rasse und Recht*), Berlin, 1933, pp. 41, 49, 50.

them self-evident that with Hitler's seizure of power all strikes, and indeed all labour disputes of any kind, had to cease ; for labour disputes only serve the interests of special classes, and are therefore harmful to the community as a whole.[1] If a strike takes place in spite of this, it is illegal.

This standpoint of the Nazis could not be deduced from their methods of government prior to Thaelmann's arrest. And a comparison of National Socialist doctrines with Nordic-German law leads to the opposite conclusion.

According to the former, the new Germany is a " true Germanic democracy." On the one hand there is the freely elected " Leader " (Führer), on the other, the people, his " Followers " (*Gefolgschaft*). Decisions are left entirely to the Führer, who is not bound by any majority-decision of his followers, whose duty it is to obey blindly.[1] As a contrast to this let us examine the relationship between vassal and lord, which resulted from the oath of fealty in the Nordic-German Law.[2] In swearing this oath the vassal put himself under the authority (*Munt*) of his lord. But by holding the folded hands held out to him, the lord vowed to use his authority in good faith and to honour any special agreement that might have been made.[2] The " oath of fealty " (*Treuversprechen*) was thus regarded as setting up a two-sided legal relationship, with mutual rights and duties.[2] The lord might use his authority to hold his vassal to the bargain.[2] But conversely, while he could not be directly compelled to carry out his duties, he lost his rights of lordship if he failed to do so.

Nordic-German law was always governed by the conception that it was wrongful not only for the individual to fail in his duty to the community, but also for the community to fail to render to the individual, or the lord to his vassal, that which was due.[3] A wrong of this nature could be prevented or removed in various ways. The

[1] Hitler, *Mein Kampf*, pp. 99, 501, 509, 510.

[2] Prof. Otto von Gierke, *Obligation and Liability in the Older German Law* (*Schuld und Haftung im alteren deutschen Recht*), 1910, p. 11 ; p. 13, note 4 ; pp. 50, 132–7, 141, 143.

mildest was the vassal's right to disobedience—to passive resistance.[1]

This basic principle is not affected by the distinction drawn in modern labour law, between strikes and passive resistance, or " ca' canny." Both are intended as a defence against the misuse of authority, and this defence ought not itself to be a wrongful act.

The right of workers to strike, then, is to be found also in Nordic-German law.

C. Procedural Peculiarities

(*a*) *Thaelmann and the previous Amnesties :*

At the time of Thaelmann's arrest, there was no evidence against him. As a result of Acts of Indemnity [2] passed by the Governments of Hermann Müller and General von Schleicher for internal appeasement, only those offences committed by Thaelmann between 1st July 1928, or 1st December 1932, and his arrest on 3rd March 1933, could be considered. The Prosecution had obviously claimed that Thaelmann had taken measures calculated to make the army and police incapable of defending the State, only in order to deprive him of the benefit of the amnesty of 20th December 1932. Otherwise the indictment would have had to be confined to acts after 1st December 1932, for which period there is no evidence of activities in connection with the army or police. The Prosecution bases the accusations mainly on documents dated 23rd and 25th May 1925, consisting of the copy of a letter in which a police official describes the favourable impression made on him by a disciplined parade of the " Red Front Fighters' League " ! In view of the amnesty of 14th July 1928, which pardoned all offences prior to 1st July 1928, the Attorney-General

[1] Prof. Otto von Gierke, *Obligation and Liability in the Older German Law* (*Schuld und Haftung im älteren deutschen Recht*), 1910, p. 11 ; p. 13, note 4 ; pp. 50, 132–7, 141, 143.

[2] *Straffreiheitsgesetze* of 14th July 1928 and 20th December 1932.

declared that he did not rely on these documents as being themselves evidence of an offence, but that he merely adduced them as throwing light on Thaelmann's subsequent activities. But in fact they were used to provide circumstantial evidence of these subsequent activities, about which no other evidence is forthcoming.

(*b*) *The Law to be applied :*

The Prosecution admitted that Thaelmann should be judged solely according to the law in force at the time of his alleged criminal activity, that is to say, at the date of Hitler's accession to power. This basic principle has been retained by the National Socialists.[1] There are no offences created by retrospective laws which affect the Thaelmann case. But the case is nevertheless judged " retrospectively "; for the National Socialist " Ideology " (*Weltanschauung*), which gained ground rapidly after the Reichstag fire, applies even to the time before Hitler's chancellorship. This is managed indirectly by means of the discretion which judges may exercise regarding the weight attached to evidence. In criminal cases the German judges were not and are not bound by any statutory rules in deciding what facts they will regard as proven by the oral evidence of accused, witnesses or experts, and the written evidence of documents.[2] They can give an unsworn statement more weight than any amount of sworn testimony. This principle of confidence in judicial impartiality has become the keystone of judicial partiality, now that justice, as I shall show later, has become an executive instrument of the Führer's will. A judge is entitled to dispense with proof of any facts the truth of which he regards as " irrefutable." [3] Hitler's axiom is that every Communist is a criminal, and that every National Socialist is a hero who—notwithstanding proof to the contrary—has never committed

[1] Paragraph 2A of the Criminal Code, Edition of the Law of 28th June 1935.

[2] Paragraph 261 of Criminal Procedure Rules (*Reichsstrafprozessordnung*).

[3] Decisions of the Reichsgericht on paragraph 244 of the old Edition of the Criminal Code and § 245 of the Edition of the Law of 28th June 1935.

murder or any other act of violence, and has never thrown a bomb. And this has now become the unshakable rule for the conduct of every judge.

The result has been that the judge in these cases no longer uses the discretion, accorded him by the old criminal law, to sentence an accused, who is considered to have had no dishonourable motives, to a fortress (a less disgraceful and onerous type of detention) rather than a prison. In the event of Thaelmann's conviction, the maximum penalty was ten years' penal servitude, the minimum six months' detention in a fortress.[1]

(*c*) *Thaelmann and the "People's Court":*

In order to hasten the transformation of the judiciary, the People's Court was set up in Berlin [2] to take the place of the Supreme Court (the *Reichsgericht*) in the trial of the more serious political cases. There is no appeal. When trying cases the Court consists of five judges: two professional and three laymen. In preliminary matters there are three judges: two professional and one layman. The professional judges, one of whom presides, must be over thirty-five years of age, and are appointed for life. The lay judges are appointed for five years by the "Leader and Chancellor of the Reich." Among them are a number of army officers and a great many important officials of the National Socialist Party and its affiliated bodies. Some of them were honest enough to admit that their opponents on the left had at the most done no worse than they themselves, and objected to passing too heavy sentences. But they were soon taught better, and there has since been a series of death sentences and sentences of long imprisonment that shows no signs of ending.

It is characteristic that the present President of the People's Court, Dr. Thierack, a former Minister, in the

[1] Paragraphs 82, 83, 85, 86, 73 of the old Edition of the Criminal Code.

[2] Laws of 24th March 1934 and 18th April 1936.

Report of the Official Commission on Criminal Procedure, should make Hitler's views on superior and inferior races and on Communism the " basis for his judgments " in cases of treason.[1] According to him there is " no doubt," and " abundant proof " exists that international " destructive forces of disintegration and annihilation " have conspired together in order to destroy the strength of the racially superior nations. Unfortunately nothing more is communicated about these proofs, so that the matter must be treated with considerable reserve, because a lawyer is apt to use the word " doubtless " when he can find no other way to get rid of his doubts. It is most interesting to observe from the Report that judges are enabled, by means of a special library and through other " unique " sources, to understand not only the wrongdoers and their misdeeds, but also what lies behind it all. It is only to be regretted that the unfortunate accused know nothing of these " unique " sources of information, and any attempt to discuss them at the hearing fails, because the judges hold their evidence to be " irrefutable." It speaks for Thaelmann's innocence that they have not dared to bring him even before such a court !

(*d*) *Ghostly Evidence :*

After Thaelmann's arrest, a search began for charges and for evidence. A collection was made of the leaflets I have mentioned, which were intended to make workers of all tendencies support the strike movement in their factories. It was then necessary to establish a criminal connection between these leaflets and Thaelmann. The correspondence between the Gestapo and the examining magistrate shows a feverish search for evidence. On 15th November 1933 copies of minutes of the meetings of the Political Bureau and of the Secretariat of the Central Committee of the Communist Party were alleged to have

[1] *German Criminal Procedure of the Future* (*Das Kommende Deutsche Strafverfahren*), 1938, pp. 79 *et seq.*

been found eight and a half months after Thaelmann's arrest. They were hidden in the Karl Liebknecht House in Berlin, which, soon after Hitler's advent to power, had been ransacked from top to bottom and converted into the Horst Wessel House. These contained resolutions passed in January and February of 1933. There was also " discovered " the report of a speech by Thaelmann on preparations for the Reichstag elections of 5th March, delivered to party officials at Zeuthen near Berlin. The contents of these documents were alleged to correspond with those of the leaflets, and also with various leading articles in the Communist Press during the same period.

Thaelmann stated that he was ill at that time and unable to work. He further pointed out that there is no " leadership principle " in his Party, and that therefore the local Party branches acted independently.

This mysterious discovery is attested to by Gestapo agents. But there is no explanation of how the copies came into existence. Thaelmann's name is nowhere mentioned, but he is supposed to have been referred to by a pseudonym. A witness made a statement to that effect to the Gestapo, but withdrew it before the examining magistrate, since his statement had been only conjecture. Now came another mystery : the Gestapo claimed to have a better witness in the form of a " trustworthy person," whose reliability could be taken to be beyond doubt, but whose name could not be disclosed on account of his official position. As a further witness they relied on a Dr. Schatz, who appeared as an expert on incendiary materials in the Reichstag Fire Trial. This time he was an expert on typescript, and was to give evidence on the point that Thaelmann's name originally appeared on one of the copies of the minutes of the meetings, but that it had been erased and replaced by the alleged pseudonym. No attempt was made to explain by whom this was done.

From the above-mentioned Report of the President of the People's Court, we learn that reliance on " trustworthy persons " (*Vertrauenspersonen*) is henceforth to be adopted

as a procedure rule even at trials. The names of witnesses and experts are to remain undisclosed if the interests of the State require it,[1] and are to be given in confidence to the Court only.[1]

More than half the witnesses against Thaelmann were police officials, among them the most notorious agents of the Gestapo. A considerable part of the rest were in prison, in protective custody, on remand or under sentence. One witness, Walter Zentschel, had been openly dropped by the Prosecution. The Gestapo still put him forward as a credible witness, even after he had admitted that certain statements, contained in a pamphlet of his on the Communist leaders, were political romanticism, created in the interests of the State.

Four witnesses for the defence : Schoenhaar, Schwartz, John Scheer and Steinfurth, were " shot while escaping." A fifth, Vesper, was so ill-treated by the Gestapo that he " died on the way to the hospital."

(*e*) *Thaelmann a Criminal for leading a Legal Party :*

To improve the appearance of the structure of his case, the Attorney-General tried to show that the aims of the German Communist Party had always been illegal, so that Thaelmann's guilt was therefore obvious as leader of that party. For this purpose the Prosecution reviewed the activities of the KPD from the standpoint of the Hitler-State, mostly citing documents dating from before 1st July 1928. They ignored the fact that until March 1933 the KPD was a legal party which received more than five million votes at the Reichstag elections ; and that they themselves, in attempting to brand general strikes as treason, had transferred this alleged illegality of the KPD to the time of Hitler's accession to power. In any case the logical conclusion to be drawn from all this was that Thaelmann had for years been acting illegally because he had led a legal party !

[1] Thierack, *op. cit.* p. 66.

The confusion was only increased by statements, made not by the Prosecution, but by well-placed National Socialists, that the KPD was only allowed to continue its legal existence for so long in order to prevent its votes being given to other opposition parties. Millions lost their votes through this trickery, since first the Communist, then the Social Democratic, seats in the Reichstag were liquidated. But in law this very trick ought to have been to Thaelmann's advantage.

(*f*) *Thaelmann and Individual Terrorism :*

As the triumphal marches of the storm troopers through mainly Communist residential areas—in Berlin and Hamburg especially—became more and more provocative, the internal political tension increased to such an extent that the Brüning Government finally decided to forbid the wearing of Nazi uniforms. The ban was later raised by the von Papen Cabinet. In this connection Thaelmann showed himself capable of practical political thought. He was responsible for his party's decision of 10th November 1931, which forbade terrorism against individuals. The excited workers were not to allow themselves to be drawn into any ill-considered action which might have serious consequences for the party. This decision was passed over as a mere pretence, although the indictment itself cites a voluminous pamphlet of Thaelmann's, in which he declares that the ban on individual terrorism is in no sense a manoeuvre, but is to be taken seriously. The Attorney-General was, of course, not prepared to accept evidence of that sort. For if as far back as 1931 Thaelmann was anxious to avoid the senseless shedding of blood, how much more must this have been the case after 30th January 1933 when the Nazis had the police in their hands and so controlled the streets. But if that argument were accepted it could no longer be claimed that the KPD had fixed on 30th January 1933 as the day for the outbreak of the revolution !

D. Thaelmann's Future Fate

(*a*) *Indefinite Imprisonment without Trial :*

The indictment was presented to the People's Court in March 1935. No trial has taken place and no trial ever will take place. Normally Thaelmann would have been released, with compensation for wrongful imprisonment. Instead of that, he remains in custody, shifted about between prisons and concentration camps. Imagine what it is like to spend more than six years in solitary confinement, without any hope of release or of fair trial !

Many lawyers have been heard to say that this is certainly very deplorable, but that Thaelmann must bear his fate as a consequence of political defeat. In any case, he had not suffered death. What would have happened to Hitler and his original collaborators if the KPD had been victorious ?

Such arguments serve to soothe the conscience, and those who use them support—perhaps unwittingly—the principle that might is right. They also distort the facts.

In the years before Hitler's accession and after, Thaelmann fought for practical political ends, the first of which was the improvement of the economic position of the working classes to the extent existing circumstances would allow. Certainly he still held to his political convictions, but he curbed those " sectarians " in the party who wanted to work on blindly for the realisation of their ultimate aims. His was one of the few and unfortunately unheard voices, calling for the unity of working people of all tendencies on a practical programme, in the forefront of which stood the defence of the constitutional rights of the workers. He wanted to preserve these rights, to build up from them and not to risk losing them through dogmatic insistence on an ultimate goal which was for the time being unobtainable. He was, above all, anxious to avoid unnecessary bloodshed.

I am in no position to defend Thaelmann's political

ideas, and for that reason I must show all the more clearly how distorted is the National Socialist account of his political activities. It was not *he* who committed a crime, but the National Socialists who have offended even against their own law, which provides the death-penalty for depriving a man of his freedom, with intent to use him as a political hostage.[1]

That they had this intent is corroborated by the fact that in September 1938 they had kept in readiness the Black Guard detachments, which in the event of war were to shoot Thaelmann together with thousands of other political prisoners. All those who were suspected of being important to the political opposition were to be disposed of in this way.[2] That, in Hitler's opinion, is how the Kaiser should have dealt with the Social Democrats in 1914, instead of extending to them the hand of peace.

(b) Jam for the Nazis, Whips for the Communists :

It is not true that the political struggle before 30th January 1933 was a struggle for power between National Socialists and Communists ; for both parties represented minorities. The question was whether a government could be formed without the participation of either, or whether one of them had to be included. Chancellor von Papen considered Thaelmann's suggestion to form a united front against the danger of a National Socialist dictatorship to be " unnatural." [3] His clique, composed of big landlords, big industrialists and generals, had persuaded President von Hindenburg to dismiss Brüning from the Chancellorship on 2nd June 1932. The latter's self-respect would not allow him suddenly to turn against the Social Democrats, who had supported him for two years.[4] Hindenburg for his part had no scruples in allowing the " Presidential Cabinet " of von Papen to follow a reactionary policy, on the

[1] Order of 28th February 1933.
[2] Hitler, *Mein Kampf*, p. 186.
[3] Radio speech by von Papen, 20th July 1932.
[4] Brüning's election speech in Cologne, 3rd July 1932.

dissolution of the Reichstag, directed against those who had put their faith in him by electing him President. This government was spoken of as being " non-party " ; but its very composition showed it to be the one-sided representative of big agrarian and industrial interests, anxious to rid themselves of the " accursed " fruits attained by the November Revolution of 1918. People were classed as patriotic or unpatriotic according to whether or not they supported the new policy. The National Socialists were classed as patriots, and it was declared to be impossible to put them morally or politically in the same class as the Communists. The patriotism of the left parties would not be disputed, provided they really broke with all pacifist and disintegrating elements.[1] Hitler repayed this preferential treatment by breaking his promise to tolerate the von Papen Cabinet. This breach of his word is officially attested.[2] Since the position of the von Papen Government had become untenable for reasons already stated,[3] his place was taken by General von Schleicher, who seemed to have a greater understanding of the problems of the time. Schleicher commenced promising negotiations with Gregor Strasser, the leader of the " Socialist " wing of the NSDAP (" National Socialist German Labour Party "), and with the Social Democratic trade union leader, Leipart, in order to obtain their support. The two economic ministries were as yet unrepresented in his cabinet. He attempted to hold the big landowners in check by an investigation of the " Osthilfe " scandal. This arose out of granting State relief to agriculture in the eastern part of the Reich and in Bavaria. A number of large landowners were accused of spending the relief moneys on luxuries, and of failing to provide the promised land for settlement. There was mention of certain aristocrats closely connected with Hindenburg.

The " Red General " Schleicher had reckoned without

[1] Von Papen's speech to the Berlin students, 21st February 1933.
[2] Official statement of 13th August 1932.
[3] See p. 61.

von Papen and the landowners. In January 1933 when the Reichstag was due to meet, the latter persuaded Hindenburg not to dissolve it as he had been asked to do. Von Papen came to an agreement with Hitler, and arranged a meeting at the beginning of January with the banker Baron von Schroeder, as a result of which certain big industrialists undertook to contribute about ten million marks to Hitler's party, to make possible the continuation of Hitler's political activities and hinder the further diversion into Socialist channels of the strong left wing of his party.

Von Schleicher resigned as a result of the President's attitude. Von Papen brought about a coalition between Hitler, Hugenberg—the leader of the German Nationalists (Conservatives)—and Seldte, the leader of the "Steel Helmets" (*Stahlhelm*). The Steel Helmets was a well-organised society of ex-service men and their sons, especially strong in the country, with political tendencies towards the right. The Reichswehr, now led by von Blomberg was in sympathy with the large landowners and industrialists.

Hindenburg appointed Hitler Chancellor on 30th January 1933, though he had often declared [1] that it would be irreconcilable both with his presidential oath and with his duty to the German people, to entrust Hitler with the leadership of a presidential cabinet, since this would lead to the dictatorship of a single party. Hitler had frequently refused to try to form a government based on a parliamentary majority.

It was solemnly agreed that the various parties of the "Government of National Resurrection" should stand together as comrades and as equals to save the fatherland. Hitler hushed up the "Osthilfe" scandal, though he was usually very active in digging out supposed corruption, but he completely broke the other part of the agreement; for in a few months he had converted the "National Resurrection" into a "National Socialist Revolution." When the Communists were disbanded after the Reichstag

[1] Official statement of 13th August 1932, and letter from Secretary of State, Dr. Meissner, to Hitler of 24th November 1932.

fire, and the Socialists a little later, this was justified on the ground of patriotism. But when the turn came for Hitler's "patriotic" collaborators in the coalition, they suddenly referred to the Constitution.[1]

These collaborators might have combined all available forces on the basis of the constitution and punished all illegal acts impartially, no matter who committed them. Instead, they rejected all the parties of the left for lack of patriotism and, ignoring past experience, came to terms with Hitler in the hope of being able to use him for their own ends. They finally found themselves landed in the totalitarian Hitler State, where they also had no desire to be.

The whole development of this affair is most unsavoury. Hindenburg, in appointing Hitler and his colleagues and setting them the task of finding a parliamentary majority, had made them take the oath to the Weimar Constitution, but then he allowed the oath to be broken and the Constitution to be infringed upon. In a great speech to the Reichstag on 23rd March 1933, Hitler had solemnly declared that he would maintain the Weimar Constitution as the basis of government. Relying on this the whole opposition fought him with legal weapons. Their trust was repaid with deceit and violence. The story of the "legal" modification of the Weimar Constitution is as much a fairy tale as that of the rescue from an imminent Communist World Revolution. There were men and women in *every* party ready to join together in a common programme of action to guide their country in its emergency. Had they done so, the law would have remained as a foundation. Instead, it has been stripped of its true character and degraded into a political catchword. The disease of looking at everything only from a political viewpoint has become an epidemic. Everything is forgiven to a political friend, while a political opponent is automatically con-

[1] Appeal of the Deputy Chairman of the German National Party, Dr. von Winterfeld, to Hitler, on 10th March 1933. Hugenberg's speech in Berlin on 27th April 1933.

sidered as a criminal. Thaelmann has done nothing illegal ; he is in prison for life simply because of his political views, which he is too honest and too proud to renounce.

Nor do I believe that Thaelmann would have treated his opponents in the same way if he had been in power, especially if he had not attained it by violence, but had shared in it through an agreement based on trust. In any case, can an unproven assumption excuse the denial of justice to an innocent man ?

(c) Justice as a Weapon of Revenge :

That revolutionaries should shoot down their opponents is nothing new. It happens either after an open conflict or by means of revolutionary tribunals.

But we are not dealing with a genuine revolution ; for there has been little change in the economic or social structure of the State. Even the political influence of the old ruling classes has remained. They have paid for it by allowing the National Socialists an uncurbed exercise of power in other fields. It must be remembered that the orderliness and the political immaturity of the German people provide a bad soil for real revolutions.

Quite apart from this, it can seldom have happened that judges and prosecutors of a Republic, who are the organs of civil justice, have behaved so as to make the creation of revolutionary tribunals quite unnecessary. For all the professional members of even the People's Court were once judges in a democracy and were trained in the conscientiousness and logic of the German jurists. I can remember from my experience in the Prosecutor's Department in Berlin, how strict a watch was kept on the lawful periods of arrest, which could not be exceeded without the severest penalties. Is their feeling of pride in being " political soldiers of Adolf Hitler " really so strong that they are unconscious of being merely the instruments of his revenge against political opponents ?

Since Hitler seized power peacefully by means of a political deal, he had no opportunity to shoot either

Thaelmann or any other of the labour leaders. Had he done so, the whole of the workers would have joined together against him. Hitler was not such a fool. He waited for the results of the Reichstag fire, and then proceeded "legally."

It is proof of Thaelmann's innocence that the National Socialists have not dared to try him. It shows the weakness of the working classes that they cannot compel his release. But it also shows the weakness of the Nazis that, while holding complete power, they do not release Thaelmann, although this would make a most favourable impression on the workers. Thaelmann's life is guarded by workers of the most varied political views and in many countries. This is a great and a necessary protection. It would be a noble thing if middle-class circles would join them and intercede for Thaelmann's release; for nothing places a political opponent under a greater obligation, than helping him to obtain his rights! Let us take the Nazi jurists at their word: they declared through their leader, Reichsminister Frank, at the Nuremberg Party Congress in 1937 [1]:

> "In the National Socialist Reich political opponents are not 'liquidated' lawlessly, by despotic methods, by a procedure of despotic terrorism, but in the course of a lawfully ordered procedure, by independent judges, and with all the opportunities of defence allowed them by law and justice. No gangster methods, no bribery of judges. To-day the freedom of the German citizen is strongly shielded and well secured by the Third Reich; and under this shield the joy of living has returned to Germany."

(*d*) *Attempts at a New Prosecution:*

The Nazi Party keeps a Roll of Honour and a Roll of Dead. The former contains the names of those who have done exceptional service to the movement, the latter the names of all who were "murdered", beginning with the names of those killed in the Hitler putsch at Munich in 1923.

[1] *Law Weekly* (*Juristische Wochenschrift*), 1937, p. 2440.

A number of Nazi jurists, led by Reichsminister Frank, stated in 1936 and 1937 that a new prosecution of Thaelmann was being prepared, with the object of making him liable to punishment as "intellectual instigator" of the deaths recorded in the Roll. What connection there can be between Thaelmann and those killed in the Hitler putsch, is hard to understand.

According to the declarations of the National Socialists, no deaths occurring after 28th February 1933, come into consideration under their new laws. So that here again the question of the criminal responsibility of Thaelmann need be considered only in terms of the law as it was before and during the early period of the Hitler Government. It should be recalled that Thaelmann was arrested on 3rd March 1933.

To live means to turn thoughts into actions by means of the will. According to the principle of free will, a man is *criminally* responsible only for his *own* acts, not for those of other people. So that in general the criminal responsibility of a political leader ends where the free decisions of his followers begin. Only in two exceptional cases is the leader held criminally responsible for his followers' acts.

The first case arises when the leader makes use of the mental deficiency of a follower, or a mistake from which he is suffering, and persuades him to commit acts, the effects of which he does not realise. In this case the follower becomes the tool of his leader, and the latter bears the whole criminal responsibility. (Indirect commission of a crime.)

In the second case both are fully aware of the circumstances. The leader, by using the weight of his position unduly, influences his follower to commit a certain act. This implies that the leader evolved the idea and suggested it to his follower. The leader is punished as the instigator, the follower as the performer of the act.

The two cases are classed together as "intellectual instigation."

If during street processions there were encounters between persons of different political tendencies, and

brawls occurred in which some of them were killed, how could the political leader, Ernst Thaelmann, be held criminally responsible for these deaths ? He could not have known that these events would happen, and he was not present at the time. And besides, how can a man who has fought against individual terrorism be the intellectual instigator of men's deaths ?

As more than six years have passed since Thaelmann's arrest, and no new charges have been brought against him ; even Nazi justice is obviously unable to overcome these difficulties. But vigilance is still necessary !

(e) Thaelmann is One Among Many :

Thaelmann's fate is by no means unique. Men and women from all classes of the population and from all political camps have suffered the same fate. Thaelmann's case is exceptional in this, that in spite of the Nazis' attempts at secrecy, the truth has come to light and his innocence can be proved without endangering others. The only crime committed by him and his companions in suffering is that they have not shared the National Socialist Ideology, or have followed the call of conscience regardless of consequences. Many of those who opposed the Nazis before 30th January 1933, did not attempt to escape because they trusted the promise that the Constitution would be upheld. They were the first victims of this mistake. Others have opposed brute power from the highest motives. It is a painful thought, that none of these people can have any hope of peace or freedom, so long as might remains right.

E. The Present Condition of the Working Classes

(a) The Destroyed Trade Unions :

The results of the Hitler régime have been as Thaelmann expected. He was a true prophet.

May 1st was indeed declared to be the "Holiday of National Labour," and then the "National Holiday of the German People," [1] on which wages were payable by the employers as on a working day,[2] but this was not in accord with other measures taken against the wage earners.

The rejoicings of 1st May 1933 were hardly over when a committee of action led by Dr. Ley caused the Storm Troops and the National Socialist Shop Cell Organisation (NSBO), to occupy the offices of the "free trade unions," which were closely associated with the Social Democratic Party of the General Free Employees' Union (AFA) and of the Workers' Bank. Leading figures in the trade unions, such as Leipart, Grassman and the ex-Minister Wissel, who had regarded their duties by no means only along narrow party lines, were taken into protective custody. The corresponding Communist organisations had already been abolished after the Reichstag fire. The property confiscated was handed over to the "German Labour Front," [3] which acts under the orders of Dr. Ley as Reichs-leader of Organisations of the Nazi Party.[4] The other trade unions, lulled into believing that they would remain unmolested, voluntarily submitted to Ley's decrees. Their leaders were invited to join the "Grand Convention of Labour of the DAF.[3] A few weeks later they were disbanded.

Dr. Ley, because of his unbecoming behaviour as leader of the German delegation to the International Labour Conference at Geneva in June 1933, was the object of much unpleasant comment abroad. On his return to Germany he held the trade union leaders responsible for this, and unjustly accused those who had so far been tolerated, of ingratitude, disloyalty and corruption, and ordered a "general cleansing of labour organisations." [5] All non-

[1] Laws of 7th April 1933, and 27th February 1934.
[2] Edict of 20th April 1933.
[3] *Deutsche Arbeitsfront* (DAF).
[4] Edicts of Hitler, 24th October and 12th November 1934.
[5] Order of 22nd June 1933.

Nazis were "ruthlessly and brutally" removed from positions of leadership and from the Shop Councils. There were to be no employers' or employees' organisations except the DAF. The Catholic and Evangelical workers' societies were declared "hostile to the State." Such men as Otte, Baltrusch, Dr. Brauer and Behrens, as well as the leaders of the Christian Trade Unions, Imbusch, and the former Prussian Prime Minister, Stegerwald, were expelled from the DAF.

In this way the DAF obtained property worth more than 100 million Reichsmarks—free from liabilities. The rights of third parties against the property of the dissolved organisations were declared extinguished.[1] The DAF was liable for debts neither as legal successor, nor because they had taken over the property.[2] Thus people who had dealt with those organisations, not for political reasons, but in good faith, merely for the purposes of business, were penalised. They were unable to get their money, and had to watch the DAF pocket the available assets. A special Inquiry Office could, in its discretion, grant compensation in exceptional cases where an application was made.[3] In practice, creditors of organisations already known for their "nationalistic" and anti-semitic tendencies, such as the German Nationalist Commercial Assistants Society, got the best of the bargain.

Characteristically, the property of employers' organisations received preferential treatment over that of the employees' organisations, although the orders and regulations might convey the impression that fundamentally the same treatment is to be applied to both sides.[3] These employers' organisations were incorporated into the new professional "estates" of industry and agriculture,[4] and

[1] See *n.* 1, p. 79, and Law of 9th December 1937.

[2] Hueck-Nipperdey-Dietz, *Commentary on the Law for the Regulation of National Labour*, 2nd edition, 1937, note 55A to paragraph 32, and the Law of 9th December 1937.

[3] Law of 9th December 1937.

[4] For example, the Union of German Employers' Societies into the Section of Political Sociology of the National Estate of German Industry.

their debts were taken over. In spite of the difference in form the same people retained their influence in the administration of the property. This treatment of the employers' organisations appears as an exception to the regulations,[1] but in practice it is the rule.

On the other hand, the workers have no control over the property which was accumulated during decades by contributions from their hard-earned wages. It is not surprising if they tell one another that their property was " legally pinched " by the Führer.

(*b*) *The German Labour Front* (*DAF*) :

The Nazis have not developed any organic economic ideas to overcome economic difficulties. They do not ascribe any importance to the rules of theoretical and practical political economy, but they think that by the force of will alone they can overcome everything. They have determined that German economy shall prosper, and prosper it must ! Therefore, all that is necessary from their point of view is to compel the workers needed in industry to do the will of the Nazi leaders and to fill them with Nazi ideas ! This is accomplished by the use of slogans, and, as we shall see later,[2] by the reorganisation of all former associations of industry, commerce and handicrafts, according to the leader principle. The name " association " has been replaced by " estate " (Stand), a term drawn from the German social organisation of the middle ages. It is used to arouse a romantic feeling of the old Germany in the people.

So a new organisation has arisen, which places each profession and occupation in a special " estate." These " estates " must educate their members to become Nazis and to represent Nazi interests in their occupations.

The DAF has a peculiar position in this connection. It is one of the Nazi Party's " associated federations," [3] is

[1] Section 24, paragraphs 3 and 31, of the Law of 9th December 1937.
[2] See pp. 155, 227.
[3] See *n.* 4, p. 79.

not under any State supervision,[1] and has only one task—that of educating employers and employees in the Nazi idea of the community and of working for labour peace. It is considered as an "estate" itself, but in contrast to the other "estates" [1] it does not represent the interests of any particular occupation or profession.

Hence arose the necessity of making not only the employees but also the employers members of the DAF.

Membership in the DAF is "voluntary." But if any employee refuses to join, he is, according to a decision of the Supreme Labour Court, liable to be dismissed without notice. In addition, only members of the DAF obtain the benefits of the social organisations, such as the "Strength Through Joy" Society. Its membership can further be controlled by means of the "labour book" [2] which every worker receives from the Ministry of Labour, the object being to provide a register of workers which will ensure the most efficient distribution of labour power. This book must be presented to the authorities at stated intervals; it must contain a record of all important events and of all jobs held. To employ anyone not having a labour book is a criminal offence.

The employers became members of the DAF because their "estates," which look after their interests, namely, the "estates" of the Reich economy (industry, trade and independent handicrafts), Transportation and Nutrition, became members of the DAF,[3] without being under its supervision. Besides this corporative association, many employers became direct members individually, in order that thereby the "unity of the people" desired by the régime should be shown and contributions given.

In this way the DAF developed into a giant organisation

[1] Prof. Dr. Theodor Maunz, *Freiburg im Breisgau* (Section on "State Control" in Fundamentals of Legal Conceptions), *Die Staatsaufsicht in Grundfragen der Rechtsauffassung*, 1938, pp. 83, 84.

[2] Law of 26th February 1935, and supplementary regulations.

[3] Hitler's Decree of 21st March 1935; Leipzig Agreements of 26th March and 22nd July 1935; Bückeberg Agreement of 6th October 1935, as amended.

with more than twenty-three million members—about three and a half times the membership of the combined former trade unions—and exerts a claim over the entire economy of the Reich. Its power is only limited in relation to the Nutrition "estate" of the Reich. All the agricultural labourers belong to the Nutrition "estate" and not to the DAF.

This division is intended to root out the union between the rural and urban proletariat, for which class consciousness had opened the way.[1]

The DAF is subdivided on geographical and occupational lines. Geographically it is divided into regions, which themselves are divided into districts and so on. The occupational division is based on the shop community (*Betriebsgemeinschaft*). This consists of the employer as "Shop Leader" and the workmen and office staff as his "Followers."[2] In every shop community is a shop overseer of the DAF (*Betriebsobmann*) who looks after the Party interests and sees to propaganda. The Shop Leader may at the same time be named overseer. The shop communities in a given branch of industry are formed into groups according to the geographical situation, with the Reich Shop Communities at their head. The leaders of the "Reich Shop Communities," together with the regional leaders of the DAF (*Reichsgauwalter*), make up the "Reich Labour Council" (*Reichsarbeitsrat*), which is attached to the leader of the DAF in a purely advisory capacity. In the same way, the District Leaders of the DAF (*Kreiswalter*) and the Regional Shop Group Leaders (*Leiter der Gaubetriebsgruppen*) compose the Regional Labour Councils (*Gauarbeitsräte*), which confer with the Regional Leader of the DAF (*Reichsgauwalter*).

All officials of the DAF are appointed and removable by the leader of the DAF and his subordinates. There is no election or nomination. The "principle of absolute

[1] See pp. 57–58

[2] Paragraph 1 of the Law for Regulating the National Labour of 20th January 1934.

leadership " is everywhere supreme. To the first ranks the " fighters " of the Party are appointed as functionaries, who, with the help of the Party, exact blind obedience from the workers.

The DAF aspires towards organisation of a military type, as is most clearly to be seen in the new armament factories. Every five workers or so are kept under iron discipline by a subordinate leader (*Scharführer*). The officials of the DAF wear uniform, as do all " troop members of the troops " (*Werkscharen*). The other members of the DAF, unless they already wear uniforms as members of the Storm Troopers or Black Guards, must use the DAF badge, and on special occasions must wear the " leisure dress " of the Strength Through Joy Society.

In order to uphold this regulation the DAF has erected since April 1936 not less than thirty-three Party Disciplinary Tribunals, in addition to the State Social Courts of Honour, which will be described in the next section. The Tribunals expel all immoral and dishonourable elements from the DAF, and above all, those who have dared to oppose the régime. Exclusion from the DAF means continuous unemployment and ruin.

The illegally seized property of the trade unions constituted the foundation of the DAF, but did not suffice for its purposes. Therefore, the DAF exacts heavy dues from its members, to which the workers were forced to contribute the greater part without being able to have any voice in either the amounts of the dues or their expenditure. The workers only once resisted with success.

The DAF attempted to abolish the weekly wage in favour of three ten-day instalments as in the army. The idea was that the deductions from three ten-day periods would exceed those from four weekly payments, but passive resistance on the part of the workers wrecked the plan.

Besides, according to the organisation of the DAF, questions of wages could not be discussed. Although they are burning questions for the workers, they belong to the interests of the occupations and professions, which are the

concern of the State officials and not the DAF. With these things only the State officials occupy themselves. Dr. Ley and his sub-leaders like to indulge in gay banquets in honour of the new Community of the People. From time to time they even deliver instructive lectures on the subject, which the Shop Leaders and their followers have to attend. No opportunity for discussion is ever provided. Instead, the workers are required to buy pamphlets and photographs, a further burden on their meagre resources. Therefore, when they see a functionary of the DAF coming, they avoid him in order not to have to listen to the same old phrases or be forced to give another contribution.

It is very difficult for the workers to talk among themselves. As a result of the peculiar fusion of employers and employees in the DAF, there are no organisations consisting of employees alone. The employers' representatives are always present to symbolise the spirit of community. But this does not remove conflicting interests. They are either never mentioned at all or called by a different name. Such tactics proved very unsafe when conditions grew menacing.

Experience proved to the DAF that hard facts in life are stronger than human will. The economic condition of the working class grew so bad through the rise in the cost of living and the lowered wages that those functionaries of the DAF who lived in constant association with them could no longer resist the pressure, and after the middle of 1936 opposed the wage reductions of the industrialists, a duty which the State officials had not performed in many cases. The leaders of the DAF—obviously because they were worried over disturbances in production—yielded to these functionaries, and their example was followed in many places.

So it came to pass that the DAF acted in the economic interest of the workers, although it is forbidden to do so.

(*c*) *The Regulation of Labour :*

The associations of employers and employees, which used to make the collective labour agreements, had ceased to exist;

and the new associations were in no position to take their place, owing both to their organisation and to the sphere of action allotted to them. The gap was therefore filled by "labour trustees" appointed with certain specified legal duties in connection with the "maintenance of industrial peace."[1] These are civil servants under the technical supervision of the Minister of Labour, and they settle disputes in that part of the economic field allotted to them in accordance with the leadership principle, subject always to any instructions from the government. They are advised by various committees called together by them and composed equally of employers and employees from the different branches of industry: an "Advisory Council of Experts" (*Sachverständigen-Beirat*) and a "Committee of Experts" (*Sachverständigen-ausschüsse*). In appointing the various members of the "Council" they are strictly bound to follow the list of nominations prepared by the DAF. The "Committee of Experts" need only be consulted on questions of wage regulations and the general principles to be followed in drawing up orders dealing with working conditions. In other cases the "trustees" determine in their discretion whether to decide a matter with or without asking their advisory committees.

The wage regulations issued arbitrarily by the Trustees thus take the place of collectively agreed contracts. An order, not mutual agreement between employer and employees, determines what minimum wages and other conditions of labour are to be prescribed. Nevertheless, many employers have paid wages below the minimum, and it was often years before the workmen could take action against them. For by the Law for the Regulation of National Labour,[2] the appeal to the Labour Courts in matters involving wage rates has practically been abolished. The decision lies with the Trustees, who at that time (the beginning of 1934) often turned a deaf ear to cases of

[1] Law for the Regulation of National Labour, 20th January 1934, with supplementary provisions and regulations thereunder.

[2] Paragraphs 32 and 66.

underpayment. Quite apart from other difficulties, in no case would individual employees have dared to enter a claim for the amounts underpaid. Because of their contributions to the Nazi Party [1] the big industrialists had to be treated gently by the Hitler régime in the early years.

The present social policy is to do away with uniformity of labour conditions, which are to be regulated separately in each factory so as to allow the utmost productive capacity. The "Shop Leaders" and the key men among their followers are to be educated in this sense by the Labour Trustees, with whom they work on the "Committees of Experts." This education is expected to have the result of gradually enabling them to solve the problem of determining wages within their own factory, so that the Trustees become mere supervisors. In practice, though not in law, the Trustees would then have much the same function as the Arbitrators were given by the Emergency Decrees of the latter period of the Weimar Republic. In those days indeed it was hoped that an improvement in the economic situation would completely restore the collective regulation of working conditions.

The intention of the National Socialists, on the other hand, is clearly to reduce still more the political strength of the working classes. By the fixing of wages according to an agreed scale within a particular factory, and not for an industry as a whole, the ties between the workers in different factories are loosened and their feeling of solidarity is undermined.

The Minister of Labour keeps a register of all Collective Agreements issued in regard to all labour regulations. This register continues to grow, showing that development is in the opposite direction to that intended—in other words, in the same direction as before.

The complete failure of the National Socialist idea of treating each shop as a shop community is an important factor in this development.

[1] See p. 73.

This conception of "shop community" was not invented by the Nazis, as they claim, but follows along the lines of the decisions of the Supreme Labour Court under the Weimar Republic.[1] [2]

According to the Law relating to Shop Councils,[3] which the National Socialists have repealed, it was the concern of the Shop Councils to represent the economic interests of the employees against their employer, and to assist the latter in fulfilling the ultimate purpose of the enterprise. "The ultimate purpose of the enterprise" (*die Erfüllung des Betriebszweckes*) is here to be understood to mean not only the private profit of the employer but the value of the enterprise in the light of national economy as a whole.[2] The Courts in their decisions availed themselves of the fiction of a third entity, which, standing above the parties, but including both employer and employees, was at the head of a "peaceful shop community" (*arbeitsfried licher Betriebsgemeinschaft*), this community bearing jointly the risks of the enterprise.[1] [2] Following this line of thought, the Supreme Labour Court decided such questions as the employees' obligation to work overtime and their right to payment of wages in cases of their not working owing to circumstances beyond the control of either party.[1] [2]

Jurists held differing views on these matters. Those among them who considered the matter purely from the employers' point of view, welcomed these decisions as restoring to the employers that freedom of action which Marxism had destroyed.[2] They refrain from stating any view on the individual freedom left to the employees.

Those who showed more understanding of the workers' problems,[3] reproached the Labour Court with deceiving itself and by allowing its desire for peace in industry to

[1] Dr. Kahn-Freud, *Der Funktionswechsel des Arbeitsrechts im Archiv für Sozialwissenschaft* (*The Change in the Functions of the Labour Law, in Archives for Social Science*), 1932, vol. 67, No. 2, pp. 162 and 169, *n.* 28 to p. 170.

[2] Dr. Hans Tigges (*Die Stellung des Richters im modernen Staat*) *The Position of the Judge in the Modern State*), 1935, p. 149, *n.* 510.

[3] See *n.* 2, p. 57.

conceal the conflicting interests of the class struggle and thereby failing to recognise it.

In favour of the second point of view it must be conceded that in a capitalist economic system, social legislation, no matter how well meant, is bound to fail when there is a slump on the market and the treasury is empty. It is then soon seen that the finest spirit in a shop community is limited by the profits of the employer. The value of an enterprise to national economy is reduced to the private profit-making interest of its owner. The Shop Councils' authority to co-operate in the shop's management becomes meaningless.

In spite of this, or perhaps rather because of this, the National Socialists' labour system has made the maintenance of industrial peace under the capitalist system the law.[1] In their "shop community"[2] the freedom of the employer as "Shop Leader" has grown, though his "social responsibility" is at the same time emphasised. The Shop Council is now called the "Council of Confidence" (*Vertrauensrat*). This change of name not only avoids "revolutionary memories," but also symbolises a change in the nature of the council.

In accordance with the principle of leadership, the "Council of Confidence" exercises only advisory functions. Its membership is made up of the employer as Shop Leader and the representatives of confidence. The latter need not have the confidence of their fellow-workers, as in the days when they were elected by them, but only that of their employer, on whose nomination they are annually appointed by the Labour Trustee. The list of nominations is made up in consultation with the supervising overseer (*Betriebsobmann*) of the DAF.

It was originally intended that the "followers" should accept or reject the list of nominations each year by means of a secret ballot. The ballots of 1935 showed that, especially in large concerns, more than 50 per cent. of the votes had been cast against the DAF list. In spite of the patriotic

[1] See *n.* 1, p. 86. [2] See *n.* 2, p. 83.

feelings whipped up by Germany's withdrawal from the League of Nations, by the introduction of conscription and by the Saar Plebiscite, in spite of eighty thousand meetings—where no discussion was allowed—addressed by Hitler's deputy, Hess, the labour leader, Dr. Ley, and their subordinates, to engender trust in Hitler—in spite of all this, the workers never deviated from their path. The Trustees thereupon exercised their power to appoint the representatives to the Councils of Confidence arbitrarily. In 1936 and 1937 the period of office of the councils was simply extended for another year by legislative action, and in 1938 the period was extended " until further notice." [1]

And this extraordinary situation, in which the government dares neither to abolish the original right to vote completely, nor to allow the employees to vote in practice, has the curious result that the members of the first Council of Confidence in a new shop are appointed directly by the Trustee without reference to the " followers."

In this way the members of the Council of Confidence have become the " corporals " of the factory. Admittedly they are entitled, if a majority of the Council of Confidence so decides, to appeal to the Trustee against certain decisions of the Shop Leader. But there is such a complicated oral and written procedure [2] attached to such a step as to impede such appeals, and the situation is rendered doubly difficult by the fact that the decision must be taken in the presence of the Shop Leader himself, who presides over the Council and is entitled to vote. Members of the Council are still further deterred from tackling such resolutions by the threat of being brought before the " Social Court of Honour " on a charge such as making irresponsible complaints or maliciously disturbing industrial peace, or other improper conduct.

On charges of this nature the Labour Trustee acts as a prosecutor. The Court of Honour of first instance consists of one official of the judicial service, acting as presiding

[1] Laws of 31st March 1936, 9th March 1937 and 1st April, 1938.
[2] Paragraph 15 of 2nd set of regulations, 10th March 1938.

judge, and one Shop Leader and one member of a Council of Confidence, acting as assistant judges. Appeals are heard by the Supreme Court of Honour in Berlin, which is formed of two jurists and three laymen. One lay judge is appointed by the Government of the Reich. The other two laymen are appointed by the Presidents of the Courts of first and second instance from a list provided by the DAF. The two professional judges are appointed by the Minister of Justice, in consultation with the Minister of Labour.

The penalties the Courts of Honour can impose are: warning, reprimand, fine up to 10,000 Reichsmarks, disqualification from the posts of Shop Leader or representative of confidence, and as regards employees, dismissal from the present place of work without notice, no matter whether longer notice is required by contract or statute.

If an employer is disqualified from "leading" a shop, he does not lose his property, but a suitable person must be found who may be entrusted with the leadership of the shop. Such a case has never yet occurred in practice.

In none of the cases of underpayment mentioned above did the Trustees charge the employers with "maliciously exploiting the labour-power of their followers through misuse of their position of authority."

On the other hand, even employers who had real sympathy for their workmen and who managed their factories excellently, have been forced by the Gestapo to relinquish their posts on political or racial grounds, and in such cases there has not always been a so-called "voluntary" sale.

And what is the fate of employees who are dismissed? It is clear that no one is to be allowed to act independently, or to raise his voice for the improvement of his economic position or that of his colleagues. What must the true position be, if in spite of all this, partial strikes and other signs of resistance have nevertheless occurred—and not without success?

The main cause of discontent is the reduction of wages, combined with "speeding-up" the productivity of the

work. Approximately two workers in five have to do exceedingly heavy and strenuous labour in order to earn a wage no higher than the old unemployment relief. Deductions from wages amount to over 20 per cent., even without the "voluntary" contributions to the DAF and the Winter Relief Fund. The internal purchasing power of money has dropped by about 40 per cent., and the quality of the goods, especially bread, has deteriorated.

According to official statistics, the number of unemployed had fallen from about six million to about 470,000 on 1st October 1937, and was stated to be about half that figure in the second half of 1938. About two million jobs formerly held by women have been given to men. Those women among them who were married were told to devote themselves in future to housework and to bearing children, instead of earning money in addition to their husbands' wages. The unmarried women were encouraged to marry by the offer of marriage loans up to 1000 Reichsmarks. Twenty-five per cent. of this loan is cancelled at the birth of each child, so that the debt is entirely annulled on the birth of the fourth child.[1] Many unemployed have found refuge in the enormously swollen bureaucracy of the State and Party. There is now one official to every six people! Men who have joined the Labour Service or the Army, not professionally, but merely to serve their term of conscription, are not counted as unemployed, even when their families receive the appropriate state relief.[2] This relief is on a higher scale than that received by the unemployed. The number of employed has further been increased by spreading out the work.[3] The use of machines was forbidden in a number of cases, so that human labour had to be used instead.[3]

In this way the unemployed as well as a considerable part of the population are not usefully occupied in manu-

[1] Regulations of 20th June 1933, 3rd March 1934 and 1st January 1935, as amended.

[2] Family Relief Law of 30th March, 1936, with regulations thereunder.

[3] Work Creation Instructions by the Minister of Finance, 28th June 1933. Ban on the Use of Machinery in the Cigarette Industry, 15th July 1933.

facturing and distributing productive goods, and the resultant strain on national income is reflected in the workers' wages.

The industrialists made a handsome profit in the first years of the Hitler régime. Their influence with the government saved them from the necessity of increasing wages. Indeed, they were able to lower wages for a considerable period. They insisted on carrying out their pact with Hitler,[1] who still depended on their goodwill to " over-subscribe " to his repeated loans for meeting his immense expenditure.

There has been a rapid and fundamental change in the picture. Instead of unemployment, which the State has tried to reduce, a shortage of labour has arisen. There seem at the moment to be approximately half a million workers too few ; about a sixth of them needed in agriculture. For this reason over 30,000 Italian labourers have been " imported " for work on the land. The shortage of skilled labour is particularly acute.

In its propaganda the government paints a glowing picture of flourishing industries, expanded to such an extent by the Führer that there are simply not enough hands to do the work. The German currency is praised as the firmest in the world. But the workers find that that does not enhance the purchasing-power of their wages !

Göring, the new General Field Marshal, has adopted stringent measures. As Commissioner for the Four-Year Plan he has ordered that all the inhabitants of the Reich—even foreigners, when international agreements do not stand in the way—can be obligated to work in the case of work of importance to the State, and, if desirable, must take special schooling for this purpose.[2] In the interest of such work all enterprises can be called upon to supply working forces.

When the worker is drafted for a *limited* time he is

[1] See p. 73.

[2] Regulations for Securing the Necessary Labour for Tasks of Particular Political Importance to the State, 13th February 1939.

considered to be " on leave " from his former employment. His employer is not allowed to dismiss him on account of the draft. His new wages are fixed by the authorities [1] and may be fixed lower than the old ones.

When the worker is drafted for an *unlimited* time the old contract is ended. If the new contract is disadvantageous to the worker, the new factory may be forced by the authorities to indemnify the worker for what he has lost.[1] The worker has really been turned in this manner into a Labour Soldier, who must earn his meagre bread, separated more and more often from his family and for longer periods. No one is allowed to change his job without the permission of the authorities.[1]

In spite of the increased need for labour, wages are held down to a common level. Private industry is not allowed to pay better wages than the State enterprises. The Labour Trustees fix not only minimum, as formerly, but also maximum wages and enforce the carrying out of their orders.[2]

In recent months, thousands of workers have been sent to the west of Germany to build the new lines of fortifications. Their jobs have in part been filled by women, including the wives of those sent to the Rhine. Furthermore, every office is carefully gone through to find brain-workers who are physically capable of being turned to manual and outdoor labour.

The reason why the National Socialists have had to undo the effects of the measures they have taken, are to be found in the laws of economics. Although these are rejected as obsolete " liberal " theories, they nevertheless continue to exist. The National Socialists therefore try to overcome their difficulties with the aid of their old panacea —force.

The former Minister of Finance and President of the Reichsbank, Dr. Schacht, steadied the Hitler Government with his exchange policy. The Reichsmark has been

[1] Regulations for Securing the Necessary Labour for Tasks of Particular Political Importance to the State, 13th February 1939.

[2] Ordinance of 28th June 1938.

blocked. German debtors can satisfy their foreign creditors by a payment in Reichsmarks into the so-called " conversion-account." [1] German goods can compete on the world market, because after payment of all charges they are still offered for sale at or below foreign market prices. The exporting firms which incur all these charges are indemnified by special subsidies levied on the non-exporting firms which amount to a thousand million Reichsmarks a year.

But Schacht is an exponent of the " orthodox " principles of capitalism. He wanted an economic policy which would result in a genuinely favourable balance, that would lead to a consolidation of debts and produce a feeling of confidence in foreigners having trade relations with Germany. He considered State supervision as a temporary condition, which should as soon as possible give way to the freedom of enterprise that existed in the " old days." He never lost an opportunity of repeating warnings against experiments with the currency, and especially against inflation. For this reason he considered it of primary importance to reduce the unwarranted and lavish expenditure on the part of the State and Party bureaucracies and to reduce armaments to a more reasonable scale. And although during his term of office a great deal happened that was contrary to his wishes, he nevertheless hoped that the necessity for importing foodstuffs and raw materials to cover Germany's shortage, would lead to international trade conferences and relations along the lines he desired.

On one side was Schacht, supported by important industrialists and bankers ; on the other Goering, backed by the Nazi Party and sections of the Reichswehr. As soon as the Four-Year Plan was drawn up with the aim of overcoming the shortage in food and raw materials by home production, Göring being charged with carrying it through,[2] it became evident that the powers that be did not feel inclined to follow Schacht's advice.

[1] *Konversionskasse.*

[2] Regulations of 18th October 1936, with Subsidiary Regulations of 29th October 1936 and 5th November 1936.

Göring used the immense power given him to set up large new industrial concerns, regardless of expense. The chief of these is the "Hermann Göring National Ore Mining and Iron Smelting Company." The winning of raw materials or their substitutes, and the raising of production generally must go on at all costs! Dissatisfied industrialists are at the mercy of the government; for more than sixty per cent. of their orders come from the State, and even their export trade business requires official sanction. The flight of capital from the Reich was checked by the introduction of the death penalty for German subjects who facilitated it.[1]

How little importance is attached to spending public money is shown for example in connection with the Labour Service. This was not introduced under the Weimar Republic, because, apart from political considerations, it would have meant an annual deficit of 1,210,000,000 Reichsmarks[2] on 450,000 men liable for service every year. It was obviously for that reason, and perhaps on account of difficulties of organisation, that service in the Labour Corps was restricted under Hitler to six months, and therefore only partially enforced.[3] But the system is now being extended, in such a way that it will soon cover three-fifths of the maximum annual draft of labour service.[3]

Schacht's resignation from the Ministry of Economics on 27th November 1937, threw light on Germany's true situation. He had more than once before tried to resign, without success. Though he remained President of the Reichsbank for a few months longer, this was of little practical importance, for the Reichsbank is no longer an institution independent of the Government and responsible for the currency, but is subordinate to the Führer and Chancellor of the Reich.[4] The Ministry of Economics was

[1] Law against Economic Sabotage of 1st December 1936.

[2] Jeserich, *Die allgemeine Arbeitsdienstpflicht für Sozialwisserschaft und Sozialpolitik* (*General Labour Service, in Archives for Social Science*), 1932, p. 99.

[3] National Labour Service Law of 26th June 1935, and decrees of 26th September 1937, 24th November and 7th September 1938.

[4] Law of 10th February 1937 with Regulations of 4th March 1937.

under Göring's personal direction until January 1938, when Funk, long a member of the Party, and up to that time Göbbels' right-hand man at the Ministry of Propaganda, and industrial adviser to Hitler, was given the portfolio. No opposition is to be expected from him to the commands of Göring and the generals and colonels who have now the direction of industry.

At the end of 1932, shortly before Hitler's advent to power, the Reichsbank had in its possession 920 million Reichsmarks in gold and in foreign exchange designated as backing for the currency. By the end of 1937 all but seventy-six million Reichsmarks had been spent. The annexation of Austria and her financial resources helped to keep the reserves substantially constant during 1938. The Nazis tried in March 1939 to fill their empty coffers with the gold and foreign currency of Czecho-Slovakia. At the end of 1937, 7500 million Reichsmarks of paper money were in circulation, an amount which has certainly not been reduced since. Thus a hundred-mark Reichsbank note represents a gold value of only one Reichsmark. That is the inflation Schacht fought ! And the figures given do not include short- and long-term bonds, loans and similar papers which serve as a substitute currency.

The government's measures result not in avoiding inflation, but in concealing it. Prices are forcibly prevented from shooting upwards in conformity with the devaluation of the Reichsmark. Breach of the price regulations is met by severe penalties, including the closing-down of offending concerns. Prices are now determined, not by supply and demand, but by government decision.[1] This is the easier, since agriculture, industry and trade, are already controlled for the purpose of using home-produced substitutes to overcome the shortage of raw materials.

Hitler was given power out of fear of Socialist Planned Economy, and to restore freedom of production and freedom of trade. He has set up instead a planned economy that

[1] Law for Carrying out the Four-Years Plan, 29th October 1936.

is neither Capitalist nor Socialist, and above all, not even economic.

All calculations have been upset. The years of good profits are past. The long-term planning of private industry has become impossible. Wages cannot be raised. The whole " economic structure " would collapse if even one corner of the veil covering it were raised.

In the speeches he made during 1938 Hitler continually repeated that under the " National Socialist System," not one mark was being spent except in return for an equivalent amount of labour. So the place of those 844 millions in gold and foreign exchange expended for armaments has been taken by the labour-power of the people ; primarily that of the workers, who, because of their poverty and the loss of their organisations, are the most defenceless. They must perform fixed work in a fixed job under ever worse conditions. Often they sleep in barracks. Family life has ceased. We have already seen that the women too are harnessed to production whenever possible. The forty-hour week is a vanished dream. The working week now often exceeds seventy hours, and a further extension is by no means impossible. The rising production resulting from all this brings no relief to the workers. It has always been the case that business has had to support the armed forces and the civil service. But if industry is to be capable of subsisting, it should not be oppressed by demands for such purposes. In spite of that, to-day these demands reach gigantic proportions. The products of labour flow for the most part into the enormous war-machine, and to that extent are eliminated from the circulation of commodities and become unproductive. To compensate for this the labour-process must be strained still further. Precautions to protect workers in the course of their employments are reduced. There has been a shocking increase in industrial disease ; while expenditure on the prevention of, and compensation for, accidents has been reduced. There is no opportunity for true relaxation after strenuous overwork. The recreation provided by the Strength

Through Joy Society is felt, especially by the older workers, to be a mere sham, affording no relief from continual supervision and ordering-about.

The one per cent. gold backing can itself only be maintained by labour. The Reich therefore endeavours to enter only into such trade-agreements with foreign powers as allow of payment in the products of labour and not in money. Besides, goods are exported with price-reductions which in private business would be considered unfair. As the difference between the price reduction and the normal market price of the exporting firms [1] is made up by subsidies from the non-exporting firms, and as the non-exporting firms who must pay this difference must get it out of their enterprises, this waste of German goods reduces the purchasing-power of the wages of the German workmen. The full equivalent of the work performed does not flow back any longer into the national economy. The Reich, in order to maintain the purchasing-power of wages would be obliged to raise them. For this purpose it would have to increase the amount of paper money in circulation. The result would be inflation, which it would be no longer possible to conceal. For this reason the Reich pursues its armament policy in such a way as to keep down the purchasing-power of wages. Such an artificially stabilised currency is incapable of supplying the necessary cash. To meet this scarcity the Reich began paying for goods in bills with at least six months to run. The resulting money-shortage was clearly to be seen in the slump on the German Stock Exchange at the beginning of August 1938. The best German industrial stocks and shares fell by 20–45 per cent., and the State was forced to buy in order to stem a further fall in the market.

In the spring of 1939 the Hitler régime decreed a new financial plan [2] to extricate Germany from its increasingly acute financial difficulties.

The Reich Minister of Finance was empowered to issue two kinds of tax certificates, I. and II. Both kinds can be

[1] See p. 95.

[2] Law of 20th March 1939.

used by the Reich or its subdivisions—the local governments, the Reich Auto Road Corporation, the Post Office, etc., to pay private enterprises for goods delivered or services rendered, up to 40 per cent. of the total value of the goods delivered or services rendered—20 per cent. with each kind of tax certificate. Tax certificates I. may be returned by the private entrepreneur in full payment of taxes and customs duties after the seventh month following their issue at their exact nominal value, tax certificates II. after three years at 112 per cent. of their nominal amount. Even before the requisite seven months or three years an entrepreneur may avail himself of tax certificates I. and II. in the same way as the Reich, namely to meet all his obligations, except wages and salaries, up to 40 per cent. —20 per cent. of each kind—in these certificates, and 60 per cent. in Reichsmarks.

If an entrepreneur retains tax certificates I. continually for ten months, he obtains an advantage in respect of income and profit tax. He can increase the depreciation charges on his depreciable goods and machinery by 20 per cent. of the total amount of the tax certificates held by him. This initial percentage rises by 5 per cent. every additional year in which the entrepreneur holds the tax certificates over and above the first ten months, up to 35 per cent. after three years. An exporting entrepreneur furthermore, enjoys the advantage of being in a position to add another 10 per cent.

Losses must inevitably result from the fact that future tax revenue is being spent now, and these the Reich intends to make up by an increased yield of taxes which the government expects after Germany's national political tasks [1] have been fulfilled. It hopes further to meet the losses by cutting down the expenditure of public administration and by the imposition of a super-tax on income. If a person has had an increase in his income in the past financial year as compared with the year preceding, he will be taxed as to that increase according to a graduated scale.

[1] Law of 20th March 1939.

The amount of tax certificates which the Reich Minister of Finance may issue is unlimited. No further mention is made in the decree of the economy which is to be observed in public administration, nor of the increase in revenue yield expected out of the accomplishment of the national political tasks of the Reich.[1] That passage may possibly be understood to mean fresh internal or external " coups de force." In any case, the Reich is now " legally " entitled to issue tax certificates up to an unlimited amount as a supplementary currency, even if the increases in national revenue hoped for fail to realise and thus to make up the losses which have been incurred.

There is no end to the demands of this moloch that calls itself a People's State. Those individual achievements which are still produced as vestiges of an earlier culture are swallowed up in a maw that calls for arms and still more arms.

What will be the outcome of this development? It is comparable to an avalanche, rushing downwards at an ever-increasing speed. Even if there were a will to stop its destructive career, it is no longer possible to do so. In order to save the proud structure, which the Nazis boast is so secure, but is so in appearance only, the moment will come when it will be imperative to turn the unproductive war material to productive uses. The war-machine must procure foreign gold and foreign land to replace the vanished capital. But will not Germany be so shaken in that event as to cause the collapse of the whole system?

We must not let prophecies detain us in our desire for a full comprehension of events and facts. Nature has precluded us from seeing into the future. But perhaps we are justified in concluding that this whole process may suffer a sudden change of direction, when the people flag in their power and willingness to work. And here the reckless exploitation of the nation's health will play its part.

Quite unconsciously, National Socialism is giving the

[1] Law of 20th March 1939.

German workers extremely practical lessons about the "accursed" workers' international. The foreign powers consider it necessary to meet the German armaments with equal armaments and as a consequence find themselves forced to demand higher production from their workers. The German régime then increases its demands upon the workers—and so it goes on, a spiral without an end. Will not the German workers, so far as they have escaped the stupid mass psychology, be brought to the idea of making a united front with the foreign workers in order to bring this condition to an end? Can any lover of civilisation blame them for such a thought, and must he not, even if he is a Conservative, deplore all the more this inevitable development, as it has arisen through an irresponsible and unnecessary overemphasis of the idea of state sovereignty?

The brutal power of those in authority compels the workers to bear their fate still longer. They are told that this is their patriotic duty. Their country must be defended against the enemies that threaten it. The Führer defeats them without war, and leads his people from triumph to triumph. The prestige he wins by his triumphs discourages forbidden questions and forbidden doubts. Anyone who still asks questions or admits to a feeling of doubt, anyone who dares say that Germany has long been living under war conditions, risks finding that the weapons he has himself forged will be turned against him. If conditions become so bad that questions and doubts grow up of their own accord, then a new triumph will be necessary, followed by fresh prestige. Obey in silence—trust blindly—produce enormous quantities of weapons to kill those whom you would like to regard as brothers—these are the commands of patriotism! Is it in these circumstances surprising that not only workers, but also innumerable people from all classes of society, find themselves confronted with the question: What is this patriotism?

F. Patriotism

(*a*) *National Socialist Patriotism:*

However ardent a man may be in the love for his country, the National Socialists will only recognise him as a patriot if he shares their "exclusive," "ideological" and "racial" views. Since their patriotism is based mainly upon heroism, the two million Germans who died for the freedom and honour of their country during the World War are considered in the light of the "blood myth" (*Mythus des Blutes*).[1] These dead have been retrospectively Nazified. Those who on racial or political grounds would have been the enemies of the National Socialists to-day, and therefore criminals, are denied the heroism of their death. For, it is said, such men took part in the fighting only under compulsion.[2] The Nazis have gone so far as to remove certain undesirable names from the war-memorials, in spite of the disapproval of the fighting services. Among them are even the names of volunteers! This conduct is all the more reprehensible since in the new criminal law, which is now in preparation, any attempt in public maliciously to belittle the "heroic death of the German soldiers" will be liable to punishment.[3] The National Socialists avoid all difficulties arising from such contradictions by saying that the fate of individuals no longer matters, since they will gradually vanish from the memory of man; whereas the anonymous "types" enter into Valhalla.[4]

Nazi patriotism does not soar into idealistic realms of sacrifice, but is founded upon material reality. It therefore approves the aphorism of Bismarck, that a state which took

[1] Alfred Rosenberg, *The Myth of the 20th Century*, 10th German edition, 1937, p. 699.

[2] Hitler, *Mein Kampf*, p. 185.

[3] Prof. Dr. Nagler, *Report of the Official Commission on Criminal Law* (*Das Kommende deutsche Strafrecht, Besonderer Teil*), 2nd edition, 1936, Breslau, p. 110.

[4] Rosenberg, *op. cit.* p. 618.

away his property would no longer be his fatherland, considering this attitude the mark of the superior man.[1]

The distinction between "racially-conscious lordly characters" and "serf natures," is explained in this wise: the former wish to preserve their property for the sake of their people, while the latter, in accordance with Marxist doctrine, regard "property as stolen," although their own desire to possess it is the sole motive behind their actions.[2] It is claimed that the latter devilish doctrine grew up in the fertile soil of the western democracies,[3] whence it spread and brought about Germany's collapse.

The Nazis have used their position of power not only to accumulate riches for the Party, but also to reward with large personal fortunes the "noble-mindedness" of their leaders. Even the minor leaders have all managed to acquire country houses without having earned them by their own labour. Many of these men were deeply in debt a few years ago, and have not so far considered it necessary to fulfil their obligations. They took advantage of the fear of their creditors to press their claims.

But the worst aspect of all is that patriotism is used to justify cruelty and infringements of the law. Political opponents have ceased to be citizens of the State. Before the seizure of power they were ejected from meetings with the aid of beer-mugs and pistol shots. This Hitler [4] called "the awakening of old war-time memories," which "made his heart rejoice." Since the Nazi advent to power they have become outlaws. The Nazis merely ridicule the idea that state power has been given them on the understanding that they accept responsibility for *all* citizens. They worship force and are impressed only by greater force. The defenceless can expect no help. No foreign state troubles about them; for that is contrary to the principle of non-interference in the internal affairs of other countries.

[1] Rosenberg, *op. cit.* p. 543.
[2] Rosenberg, *op. cit.* p. 618.
[3] Hitler, *Mein Kampf*, p. 85; Rosenberg, *op. cit.* p. 698.
[4] Hitler, *Mein Kampf*, p. 567.

A patriotism demanding the acceptance of such conditions ceases to be a criterion in conflicts of conscience.

The Nazis try to avoid any such conflicts of conscience. The people must only learn what *they* teach, and must be cut off from all other sources of information. In this lies a great danger to the fatherland, for :

> " . . . if a man were prepossessed in favour of his country and his country's constitution, heedless of their frailty, not having noticed it or not having cared about it, then his patriotism would be *blind* only and would die away as soon as his eyes were opened. . . ." [1]

The absence of opportunity for comparison also hinders realisation of the fact that patriotism often serves as a cloak for extremely selfish aims within the community.

The Nazis demand blind obedience, though before they were in power they were unwilling to accept this discipline for the love of the fatherland ; then they considered themselves entitled to take up an " anti-national " attitude.[2]

Their idea of " patriotism " is not without its dangers for an idealistic youth, and for those older people wearied or disillusioned by life. No restraint is put upon natural instincts. The joy of living is heightened by the thought that those responsible for all the misfortunes of the people have been found and that they can help to destroy them. No one is given time to think that in this way terrible mistakes may be committed. Above all, they have failed to ask themselves whether their own faults are not partly responsible for the confusion into which the country has fallen.

But for this mixture of incomplete ideas and unrestrained feelings, of vague romanticism and whipped-up excitement, it would have been impossible to thrust an innocent man like Thaelmann outside the law. The attacks made on

[1] Friedrich von Schiller, *Review of a Book on Love of the Fatherland* (*Kritik über ein Buch von der Liebe des Vaterlandes*), Insel-Ausgabe, collected works, vol. 7, p. 592.

[2] Rosenberg, *op. cit.* p. 543.

him and his political friends for their lack of patriotism culminated, for the period we are considering, in the legend of the " stab in the back," and in the slogan of " fourteen years of Marxist rule."

(*b*) *The Legend of the Stab in the Back :*

Thaelmann's behaviour even during the War spoke for his patriotism.[1] When war broke out, the Socialist workers were organised politically into the German Social-Democratic Party. It was not until 1917 that the left wing split off as the Independent German Social-Democratic Party, while the German Communist Party was not formed until after the war.

The Social-Democrats were unanimously in favour of defending their fatherland. They wished to prevent its exploitation by foreign capitalists. On the other hand, their feeling of solidarity with foreign workers made them anxious to defend these against possible exploitation by German capitalists. At the beginning they voted unanimously for the granting of war-credits. Even Karl Liebknecht was at first no exception.

Any far-sighted political leadership, even acting under the orders of the military command, might have expected difficulties to arise as soon as it began to aim at a peace with annexations. The attempt to avoid those difficulties by representing the Treaty of Brest-Litovsk, which Russia was forced to sign at the beginning of 1918, as peace without compulsion and without annexation, was a peculiar manoeuvre. After the armistice, the Reichswehr adopted the same tactics. Among the " lectures for enlightenment about the truth " which Hitler had to deliver after 1920 in his capacity of Education Officer to a Munich regiment,[2] there appears a passage in which he asserts that the Treaties of Brest-Litovsk and of Versailles were not on the same plane.

The munitions strike and the general strike of January, 1918, that is to say, just a few weeks before the great

[1] See p. 47.

[2] *Mein Kampf*, p. 235.

German spring offensive in the west, were according to Hitler,[1] the " stab in the back " by the Marxists. In his opinion the enemy powers were already convinced of their defeat, but the strike seemed to them to foreshadow a revolution, and so spurred them on to fresh resistance.

Historians have not been idle in the last twenty years. In particular the Reichstag All-Party Commission appointed to investigate the causes of the collapse, has made important contributions towards discovering the truth.

From the materials published by the Commission, it is clear that the Socialist Parties, like all others, were surprised by the strike, which arose spontaneously among the men in the factories. The Party chiefs subsequently took over the leadership of the strikes, in order to bring them to a satisfactory end as soon as possible. The strikers made no revolutionary demands ; they merely wanted relief from the oppressive conditions imposed upon them by the state of siege which the government had declared at the beginning of the War. Politically significant was the demand for a peace without annexations and without reparations, and for the granting of universal, direct, and equal suffrage, together with a secret ballot—a reform that was long overdue.

The military command refused to negotiate and repressed the strike. However regrettable the whole affair may have been, it cannot be said that it had a dangerous effect on Germany. There was no shortage of munitions during the spring offensive, which failed in its ultimate purpose for the lack of half a million men to repair the gaps torn between the English and the French lines. These men were kept in the east to garrison the occupied territory, instead of being thrown into the fighting in the west.

How strong the big landowners of the eastern Elbe still felt themselves to be, upheld as they were by the High Command, is shown by the fact that as late as 12th May 1918, the Prussian legislature rejected a bill to introduce

[1] *Mein Kampf*, pp. 213–17.

the electoral reforms mentioned above, and proposed plural voting instead.

In Prussia, the largest state of the Reich, which included about two-thirds of Germany, there was still the " three-class " voting system, which secured for the Junkers a preponderant political influence.

The male population was divided into three classes according to the amount of income-tax paid by them. The third class included also those who were unable to pay any tax. The members of each class elected—in public—a third of the " electors," whose duty it then was to choose in the same way and in the same proportion, the members for the Prussian legislature.

The greater wealth of the big landowners and industrialists thus secured them an effective majority, notwithstanding the numerical superiority of the working classes ; and this majority they were unwilling to lose. The plural voting system they supported allowed an additional vote in certain circumstances—the necessary qualification as far as workers were concerned being not war service, but advanced age and a large number of children.

Such an attitude to electoral reform had political effects far more serious than those of the munitions strike. " We are allowed to die for the fatherland, but not to have a voice in its government," the workers grumbled. When the military situation grew steadily worse, the High Command changed its attitude, and in order to improve the morale urged the electoral reforms, which were finally adopted in September 1918—too late !

In civilised countries, patriotism needs some intellectual stimulus. Our strong sentimental attachment to the people and the country that have surrounded us from birth, can become blunted with time and be transferred to new surroundings and conditions. It is therefore necessary to strengthen our patriotism by a conviction of the goodness and usefulness of our country's constitution.[1] This aim

[1] Friedrich von Schiller, *loc. cit.* p. 111.

was neglected during the War, when the High Command, which held the political leadership of the country, and the privileged classes, always imputed their own views to the rest of the community; while for anyone else to put forward his opinions was regarded as in itself improper.

The suppression of the intellectual freedom of men who were risking their lives for the protection and promotion of the *general* good, displayed a shocking lack of psychological insight. A modern industrial worker cannot see life from the point of view of an obsolete feudalism, nor with the eyes of a big industrialist. In any case, the workers were not demanding the exclusive application of their own ideas. They only wanted a fair share in political life—and that they had certainly earned by defending the country. A wise government would have used its power to make concessions voluntarily, not under compulsion, when there was no other way out.

Moreover the attitude of the soldiers was gradually changed through their war experiences. They came face to face with the enemy, and spoke with prisoners and wounded. Although I was in the Imperial Navy, I was sent at Christmas 1914, to the line near La Bassée, under special orders, and was a witness of the fraternisation between British and German soldiers there. Were not these splendid fellows suffering like ourselves and did they not resign their human doubts to their patriotic duty? We learned, too, that in the enemy countries the military command was criticised publicly and in Parliament, and that in this way grievances were often remedied. After all, we were a people's army, and not mercenaries who had sold themselves to their master. To treat tactful and objective criticism of the military authorities as unpatriotic showed either political immaturity, or a self-seeking that may well often have been unconscious.

This stubborn and narrow-minded attitude, and not the desire of the Socialists for a negotiated peace, was a principal cause of the German collapse. Even those of different political views must acknowledge this. Prominent officers

of the Prussian General Staff privately admitted later on that a peace by negotiation instead of the peace imposed by the Versailles Treaty would have meant a " victory " for Germany.

But the allurements of power were too great ; and the New Germany has not learned from experience. The criminal law forbids all criticism of government or army, even of the army of the past. And the new German criminal law that is being prepared, considers it necessary, under certain circumstances, to punish the " defamation of the heroes of German history " [1] as an offence against the national spirit. The legend of the " stab in the back " is spread among the people by all the resources of propaganda, and the Socialist workers cannot defend themselves against it. Their alleged misdeeds are to be part of the history of Germany.

(*c*) *The Fourteen Years of " Marxist Rule " :*

From the collapse of the Empire until Hitler became Chancellor, Germany had twenty-two governments. Only the first two of these were Marxist, if the joint rule of the Social-Democrats and the Independent Social-Democrats can be called Marxist. After the middle of February 1919—before the Weimar Constitution was set up—the Social-Democrats only governed in coalition with " bourgeois " parties (Centre, Democrats, and at times, Stresemann's German People's Party). Even so, they only formed part of eight cabinets, and only four times provided a Chancellor. Of the other twelve " bourgeois " cabinets in which the Socialists took no part, the German Nationalists (Conservatives) took a leading part in two, the first cabinet of Dr. Luther [2] and the fourth cabinet of Dr. Marx.[3] Also in Dr. Brüning's two cabinets [4] important posts were filled by members of the German People's Party, and by men

[1] See *n.* 3, p. 103.

[2] 15th January 1925 to 20th January 1926.

[3] 29th January 1927 to 29th June 1928.

[4] 30th May 1930 to 7th October 1931, and 7th October 1931 to 2nd June 1932.

still further to the right—such as Treviranus, leader of the Popular Conservatives, and Dr. Schiele and Schlange-Schönigen. The two latter belonged to an agricultural group, and like the Popular Conservatives, had split off from Hugenberg's German National People's Party (Conservative).

Prussia was first governed by the Socialists alone, then by a coalition of Social-Democrats, Centre and Democrats.

During its twelve years of life, this coalition contained the Social Democrat, Braun, as Premier and Severing as Minister of the Interior. At first two of its ministers, who were members of Stresemann's German People's Party, worked successfully with them. Later on, however, the Party being mainly supported by the heavy industries, and therefore afraid of being compromised by too long co-operation with Socialists, ordered these two members to resign. The same reason was also the chief cause of the failure of Stresemann's " grand coalition," [1] which included all parties except those to the right of his own, and those to the left of the Social Democrats.

The Socialists, the Democrats and the Centre Party, who between them had more than a three-fourths majority of the Weimar National Assembly, are blamed for their lack of patriotism in accepting the terms of the Versailles Treaty. But who will venture to cast a stone at these men and women? It was no longer a question of individual parties, but of the existence of the fatherland. In condemnation of this " instrument of peace " all were agreed, but most people were convinced that no better terms could be secured by postponing its acceptance. They could only hope that in the calmer period following the declaration of peace their former enemies would come to recognise the injustices of the treaty. In this they have proved right.

The same considerations applied in 1921 to the acceptance of the London ultimatum on reparation payments.

[1] 13th August 1923 to 6th October 1923, and 6th October 1923 to 30th November 1923.

In those days our patriotism was less noisy, but more sincere and more heart-felt. The country to whose aid men faithfully rallied was in sore need. I shall never forget an experience in March 1921, when I accompanied my wife with our second son, then a nursling of four months, to the Goerlitzer Station in Berlin. She was leaving for her Upper-Silesian home in one of the Government's special "plebiscite-trains," in order to vote that the district should not be given over to Poland. There were thousands of persons from all classes of the community travelling on the same errand, united by a common bond. They were especially kind to my wife, whom they admired for making such a journey with a nursing baby to vote for her country. The whole train was proud of its "plebiscite baby." As they started off they sang the National Anthem, restrained and sorrowful like a hymn. Sixteen years later, because of my so-called "crimes," both mother and child were declared unworthy of being German citizens.

Such pictures are out of place in the Nazis' new interpretation of history, and so they are suppressed or distorted. I discovered this, when at Easter, 1935, our eldest son asked to be given a history book for his confirmation. Since the book trade had been co-ordinated with the Nazi-ideology (*Gleichschaltung*) it was no simple matter to grant his request. We did not want any of the new editions of history which were flooding the market. We wanted a reliable book, which would help to widen the horizon of a fifteen-year old boy. Naturally, we could not say this openly to the salesman; it would have been dangerous both for him and for us. We still remember with amusement the "diplomatic" discussion, which ended in the purchase of Knaur's *History of the World*.[1] To my astonishment, in a chapter edited by Professor Helmut Göring, of the Stuttgart Technical College, on "The War and the Post-War Period," I found the following exposition :[2]

[1] Edited by K. A. von Mueller and P. R. Rohden, 1935.
[2] Pp. 816–17.

" The Liberal Weimar Republic was to discover what it means to govern a country without an army, without the possibility of defending itself against the outside world. In their policy of complying with the Versailles Treaty they yielded again and again ; for the Socialist circles in Parliament refused to offer resistance, and were always found supporting the claims of foreign countries even to the detriment of Germany's vital interests. At the same time this State tolerated the inflation, which brought about the complete destruction of the property of the German middle class. This ' unimpassioned socialisation ' deprived the Republic of the support of those sections of the community whose co-operation should have been the basis of their policy. The very next generation of young people was to show the political effects of this process of sociological transformation.

" The innermost feelings of the German people were aroused to resist the Government's policy of compliance. When Poincaré tried to occupy the Ruhr, in order to achieve by force his ultimate aims on the Rhine and in Germany, he was met for the first time by a determined passive resistance on the part of the population, which would not let itself be defeated. Even the State supported this battle of the people of the Rhine and Ruhr districts. But since the government's internal policy was dependent on the Social-Democrats, this first beginning of an improvement was bound to end the same way as the war. Admittedly, when the French occupied the Ruhr, the Marxist parties could not escape from the national feeling of their own supporters. But in Parliament they again undermined the people's struggle, and finally so weakened it that it could no longer be carried on."

Should German youth build up knowledge for their future life on " truth " of this kind ?

In January 1923, when the French and Belgians occupied the Ruhr, the purely " bourgeois " government of Dr. Cuno was in office.[1] The Social Democrats and Communists nevertheless declared themselves willing to co-operate in " passive resistance." The only exception

[1] From 22nd November 1922 to 13th August 1923.

was Hitler [1] and his party, which at that time was of no importance. Since the trade unions were not in a position to carry through a long general strike alone with their own resources, the State naturally provided them with the necessary money for the strikers to continue. The Nazis make this a ground for accusing the Marxist trade unions of only taking part in order to fill their own coffers.[1]

The struggle in the Ruhr was a failure because passive resistance broke down and because of the inflation. The " Marxists " were responsible for neither.

A number of big industrialists were arrested by the French as they marched in, and were condemned under martial law. They behaved with courage and dignity. But the German Government had not come to any clear agreement with the employers, and either could not or would not win them to its point of view. As a result, the mine owners finally abandoned passive resistance. They should not, however, be too hastily blamed for this. In the last resort these men were moved by objective considerations, the most important being that they were responsible for the maintenance of their mines, and for the supplying of coal to the population. Nor should we doubt the patriotism of the workers, who, under pressure from their employers and from the enemy garrison, decided to return to work, after steps had already been taken to try to replace them by foreign miners.

It is idle to discuss here whether the determined action of half a million miners, led by their trade unions and helped by their employers, could have achieved any real political success. The French could hardly have found substitutes for such a number of men. But the German population would have been harder hit by the inevitable ill-effects of passive resistance than the French were by their failure to take forcibly what Germany refused to give up voluntarily. But the " Marxists " had proved that they were ready, if need be, to suffer for their country.

This " passive resistance " finally presented the absurd

[1] *Mein Kampf*, p. 779.

picture of the mines working and the coal lying piled up on the dumps. It was transported by the army of occupation, who took care to avoid the striking miners outside the pits.

The Cuno Government, the employers and the "bourgeois" parties share the greatest blame for the new inflation which they introduced in order to finance the struggle in the Ruhr.

At the beginning of the occupation of the Ruhr,[1] as the result of events during and after the War, a million paper marks, at the current rate of exchange in dollars,[2] were worth only 422 gold marks. As the amount of currency in circulation was increased without any corresponding increase in the gold backing, depreciation became more and more rapid, until in November 1923 a billion paper marks were worth one gold mark. On this basis the currency was stabilised in the beginning by means of the "Rentenmark."

Surely it cannot be held against the workers that by means of a general strike they compelled this Government to resign?

At the end of a full week's hard work, they received a wage that lost its value even while it was being taken home. It became the rule for the women to wait at the factory gates on pay-day and hurry off to market to buy food before prices went up still higher.

In a short time everyone was a millionaire, a multi-millionaire, a billionaire; and it was often some time before they realised that they had all remained paupers. The "leading" industrialists, the big landowners and the owners of other real property knew from the first what this delirium of numbers meant, and used that knowledge to their advantage. They paid off charges on their property to the nominal value of hundreds of thousands of Reichsmarks. Payments, which in reality amounted to fractions of a penny, counted as complete payments; for, by statute, one mark was worth one mark—whether paper or gold mark—under the forced currency. A great many people

[1] On 11th January 1923. [2] 1 dollar equalled 4·20 RM.

had invested modest fortunes in first mortgages ; finding themselves penniless, they bombarded the government with demands for action. But the Minister of Justice, Dr. Heinze, who represented the German People's Party in the Cabinet, refused new legislation and declared revaluation to be impossible. This was just what the debtors wanted. They threatened those creditors who refused to accept payments of their debts in this way and to give receipts, with payment of the sum into court pending action. Anyone who had more money than he needed for living expenses went to the bank and bought foreign exchange, or speculated on the Stock Exchange ; for share prices were rising rapidly, gradually catching up with currency inflation. The money that thus went out of circulation was replaced by the official printing-press money, which made the inflation yet worse. The regulations against exchange-speculation were inadequate. It was not until August 1923 that attempts were made to prevent the export of Reichsmarks.

It was the poor devils living from hand to mouth who suffered most.

It was then that the morale of the people gave way. They lost faith in honest work, and no longer took pride in their ability to contribute something to the community, which, at least, gives mere money-earning a nobler aspect. They became indifferent to the nature of their job and the quality of their work when they were only able to earn enough to keep body and soul together. In that way Germany became a happy hunting ground for speculators of all kinds. And at the same time the way was paved for irresponsible political adventurers.

The government itself had shown the property owners the way. The war loans, to which the people had subscribed as a patriotic duty, were valueless. So were the municipal loans and those of the separate states. The poor and the lower middle classes, who had taken their hard-earned savings to the municipal savings-bank, now could not even pay a tram fare with their money.

A series of judicial decisions, led by the Courts of Appeal in Darmstadt and Berlin, much to their honour forced the legislature towards revaluation. The Courts in their decisions started from the doctrine that every commercial contract is based on the principle of exchange of equivalent values, and that making use of the forced currency was contrary to this principle, and therefore tended to destroy all good faith in honest business transactions.

The revaluation was restricted both in its extent and in amount. Mortgagees received an average of 15 per cent.—25 per cent. of the original debt, subject to moderate interest and a long period for repayment. Repayments of capital are in part still incomplete. In those cases in which the Courts were allowed to determine whether revaluation was to be "free"—that is, unlimited as to the amount of revaluation—it was the deposed princes of the former reigning houses who came off best.

The direct cash transactions of ordinary life were excluded from revaluation by reason of their enormous number, and again it was the poor who received nothing. They had just begun to recover from the food blockade of the War, and they got no compensation from the State for their inability to buy with their wages goods equivalent to the work they had done. What right-thinking man can doubt that their labour-power and their trust in their country had been ruthlessly abused? And are matters really any different to-day?

When Cuno fell, Dr. Gustav Stresemann, the only real statesman whom Germany has produced since the War, was able to put himself in power. His political experience had been deepened by his country's fate. He had held a leading position in the Association of Saxony's Industry, and was a firm believer in freedom of enterprise. He, therefore, enjoyed the confidence of leading industrial circles. But he was also deeply interested in social problems, and this gained him respect even among the ranks of the Social Democrats. As a result, he held the post of Foreign Minister—which at first he combined with the Chancellor-

ship—not only in the purely " bourgeois " cabinets of Marx and Dr. Luther, but also, until his death on 3rd October 1929, in the cabinet led by the Social Democrat, Hermann Müller, which so nearly approached the " Grand Coalition " he desired.

It is tragic that the " Liberator of the Rhineland " should not have lived until 1st July 1930 to see the evacuation of the occupied areas, an evacuation which, but for his foreign policy, would not have taken place until 1935. The Nazis have removed all signs of the honour paid to him by the Republic. The former " Stresemann Street " in Berlin is now named after Hermann Göring. With the catchword " Stresemann—verwese man," " perish Stresemann," his deeds and his spirit were consigned to oblivion.

Stresemann put an end to the struggle in the Ruhr, and came to an understanding with the former enemy powers. The Dawes Plan of 1924 did not decide whether Germany was really to pay the whole of the debt of 132,000 million gold marks fixed by the London Agreement of 1921. It merely fixed the yearly instalments and the mode of payment with some consideration for Germany's economic position, though they still remained a serious burden. The application of the Dawes Plan laid the way for the " commercialising " of the reparation debts. Above all, Germany received at once 800 million gold marks of loans for the backing of a new currency, so that she was able to replace the extremely dubious " Rentenmark " with a new Reichsmark on a secure gold basis. Even the German Nationalists for the most part voted in the Reichstag to accept the Plan. Hugenberg, who was then not yet in control of the Party, remained in the minority.

The country settled down. The revolts which had been instigated by extremists of the left and right ever since the foundation of the Republic in different parts of the Reich, but which had been officially discouraged by all parties, except the then insignificant National Socialist Party, came to an end.

In foreign politics, the Locarno Agreement [1] was followed by Germany's entry into the League of Nations,[2] and by her joining the Kellogg Pact,[3] which outlawed war.

Thus every patriotic German could reasonably hope that what Germany had retained after the War was secured to her, and that, in due course, the worst errors in the drawing of the eastern frontier would be rectified in a peaceful way.

The economic reasons for this growing confidence lay in the abundance of American money, which came in the way of loans to municipalities and to private enterprises. Between the end of 1924 and the summer of 1929 these loans amounted to over 25 billion Reichsmarks. Between 1st September 1924 and 30th June 1931 Germany paid 11,200 million Reichsmarks in reparations, to which should be added 180 millions of interest on the Dawes and Young Loans, paid during the Hoover Moratorium. The supply of American money considerably exceeded the amount required for reparations. This was no drawback, because Germany's chief problem was to build up her industry gradually until she was in the position to repay her international debts. But the soundness of the new Plan was very much open to doubt, since it meant that Germany must live mainly on credit. As regards the appropriation of borrowed money, people trusted in the experience of the "independent" industrialists, and relied on the hope that there would be no more serious crises.

Everything looked favourable at first. During those years, the Reichsbank had on an average 2500 million Reichsmarks in gold and foreign exchange to cover currency in circulation amounting to six billion Reichsmarks.[4] Wages rose about 30 per cent. from 1924 to 1928.

But what were the loans used for? Sport stadiums, swimming-baths and many other excellent public institu-

[1] 1925. [2] 1926. [3] 1928.

[4] Compare the present position, p. 97.

tions, which are now often displayed as "achievements" of the National Socialists, were built at this time by town councils with "Marxist" tendencies. However admirable they were from the point of view of the public health, they were often financially unsound, as they cost more than could be paid for them except by special measures. The municipalities can, of course, find some excuse by referring to the big industrialists who used their freedom of enterprise for the excessive "rationalisation" of their factories.

The reaction came shortly before Stresemann's death. In August 1929 the economic crisis began in America, and the influx of money stopped. In 1930 the creditors demanded repayment.

The Young Plan, which was agreed upon in 1930, brought a new international loan, and reduced the reparation debt to sixty thousand millions plus interest. Hugenberg, in control of the German Nationalists since 1928, sharply opposed this arrangement, and, partly as a manœuvre against the minority in his own Party, strengthened his connections with the Steel Helmets (*Stahlhelm*).

The workers began to resist, as they saw once again that the worst effects of the economic crisis fell on their shoulders. Political differences became more acute. The extremist parties of the left and right, the Communists and the National Socialists, began to gain votes.

It seemed as if the only way out was first to deprive the Social Democrats of their seats in the Government by breaking up their coalition with the bourgeois parties and then to establish an "authoritarian" régime. In March 1930 Brüning became Chancellor. His two cabinets, which lasted until von Papen replaced him on 2nd July 1932, consisted of non-party experts, Democrats and members of the Centre, of the Bavarian People's Party (Centre), of the German People's Party and of independent minority groups of the German Nationalists.

Once again the historical experience that despotism is preceded by a period of lawlessness was to become true.

This period began with Brüning, who relied for his authority, not on the confidence of the Reichstag, as the Constitution required, but on the confidence of the President. This was a state of affairs not contemplated by the Constitution at all. The President's right to govern by decree in case of emergency [1] was enlarged into a source of legislation. But the President's authority ceased as soon as the Reichstag demanded the cancellation of his decrees. It would, therefore, be necessary for Brüning to prevent the formation of a Reichstag majority which might demand the annulment of the emergency decrees.

The economic crisis took a serious turn. Continued demands for the repayment of short term foreign loans led to one of the big banks refusing payment in the middle of July 1931. A second big bank was endangered. Every German stock exchange was closed. All the banks stopped payment, except of small accounts. A panic threatened. The Reich had to take action to support the banks, in the course of which it took over shares of several of the big banks. The moratorium declared by President Hoover [2] came too late to prevent the bank crisis. Brüning personally negotiated with the British and French Ministers, preparing the way for the Lausanne Pact; this was signed in July 1932 by his successor, von Papen, with the result that the Reparations Debt was cancelled on payment of 3000 million Reichsmarks. Brüning himself destroyed the confidence that his personality had inspired abroad by forming a customs union with Austria, of which he did not inform the foreign powers beforehand, and from which France and Italy made him withdraw.

Grotesquely enough, Brüning, who had been appointed on the instigation of the President's irresponsible advisers to govern against the "Reds," was forced by the opposition of Hitler and Hugenberg to rely on the support of—the Social-Democrats! Brüning's policy was not strong enough for Hugenberg, who wanted to be rid of the opposition

[1] Article 48, paragraph 2, of the Weimar Constitution.
[2] From 1st July 1931 to 30th June 1932.

within his own party : the country must be governed by a "Nationalistic" Dictatorship independent of the Reichstag. Hitler wanted a dictatorship by his party. The Social Democrats accepted Brüning's breaches of the Constitution as the "lesser evil," and notwithstanding a policy that pressed heavily on the workers, prevented the Reichstag from voting down the government. On 18th October 1930, they voted for a motion to refer to a Select Committee the question of the validity of the President's Emergency Decrees, and proceeded to the order of the day, dropping the motion of non-confidence in the government. On that day the Weimar Constitution received a blow which contributed largely toward its downfall two and a half years later.

In June 1932, von Papen's "Presidential Cabinet" was formed.[1] At the beginning of December 1932, Schleicher replaced him,[1] and remained in office until 30th January 1933, Hitler's government was bestowed upon the German people.

Those were the "fourteen years of Marxist rule." During this period the "nation's" and the "social" crisis can be clearly distinguished. When in 1918 power fell into the hands of the "Marxists," they refrained from solving social problems according to their political ideals, in order to avoid "national" dangers. They even refrained from nationalising [2] the industries they considered "ripe"; the mines, for example, fearing that the former enemy powers would seize them for reparations. Their fears were to some extent confirmed when the Dawes Plan put the Reichsbank and the railways under international control. The Socialist economists were also unwilling to determine in 1918–19 the amount of State compensation for the mine owners; for they expected the Reichsmark to return to its full gold value, and the owners would then have received compensation worth more than double the amount fixed. If only the Socialists had not been afraid of this and had carried through the nationalisation!

[1] See p. 61 and pp. 8–73. [2] See pp. 156–7.

Then the mine owners would have opposed further inflation with the same energy with which they in fact encouraged it !

The Social Democrats were in the position of a trustee in bankruptcy with a very unsatisfactory estate to administer, who finds himself blamed for everything the bankrupt has done. At any rate instead of joining with the other Socialist parties to start a revolution, as had been expected, they became the staunchest supporters of bourgeois democracy.

They even went so far as to refuse the appointment of Communists to any official positions ; while Severing, the Social Democratic Minister of the Interior for Prussia, banned the " Red Front Fighters' League," on 3rd May 1929. In addition they failed from the beginning to provide themselves with a politically reliable armed force. They had no influence over the Reichswehr. Reichspresident Ebert had delegated his supreme command over the Reichswehr, not to the Democratic Minister for War, Chief Burgomaster Dr. Gessler, but to the Commander-in-Chief, General von Seeckt.[1] The latter was thus responsible for taking the necessary steps to protect the State. Severing had the Prussian police very well organised, but there were anti-Republican elements among their officers.

The right wing parties, though in the minority, became powerful through their relations with the Reichswehr and the big landowners and industrialists. They demanded the " elimination " of the Marxists. But the more they did so, the more careful became the Social-Democrats and even the Communists in observing the Constitution, in order to save the rights of the working classes. Whenever the country was in danger, they put national above social questions. Had the right wing parties made a more sober and more far-seeing estimate of the position, they would have seen the wisdom of joining with the other " bourgeois " parties in order to find a working system for democracy, which would gradually ease the social crisis. As it was, they planned for dictatorship,

[1] Decree of 8th November 1923.

and made unscrupulous use of the country's danger and of the patriotism of the bulk of the nation to further their own social interests. To attain that end they considered the devil himself a welcome ally.

The assassination of two ministers of the Reich, Erzberger [1] and Rathenau,[2] had caused grief and indignation among all decent people, as had the loss of so many lives in political encounters. The leaders of every political party except the National Socialists recoiled from such deeds; one event revealed the truth for all who wished to see it.

During the night of 10th August 1932, uniformed Black Guards and Storm Troopers forced their way into the home of a Communist workman named Pietczuch in Potempa (Upper Silesia). They woke him, subjected him to indescribable ill-treatment in the presence of his mother, and shot him dead as he lay helpless on the floor. Five of the murderers were arrested, and on 22nd August 1932, were sentenced to death by the Special Court in Beuthen. Hitler promptly sent this telegram to the convicted men:

> "My comrades! In the face of this monstrous death-sentence I feel myself bound to you with unlimited loyalty. From this moment onwards, your freedom is a question of our honour, and struggle against a government under which this was possible, our duty."

Von Papen, who was Chancellor at the time, described this demonstration of Hitler's as "lacking in restraint." [3] Shortly afterwards the men were reprieved, their death sentence being changed to life-imprisonment.[4]

"Nationalist" circles did not allow this occurrence to deter them from entrusting the government of the country to Hitler — for "patriotic reasons." The State, they declared, was again in danger. The danger this time was not the enemy powers, for the reparations difficulties had

[1] 1921. [2] 1922.

[3] Speech at Muenster on 28th August 1932 to the West German Peasants' societies.

[4] See p. 150.

been cleared up, and it now remained to build up Germany's prestige in the League of Nations and in the outside world, by means of a sensible foreign policy. All that was "in danger" was a number of social and economic privileges which justice demanded should be abolished.

And so they hit upon the slogan of the "danger of a Marxist revolution," the elimination of which in the nature of things necessitated the extermination of all Socialistic influence.

If any of the "Marxist" parties had really desired a revolution the most favourable moment would have been after the inflation or during the bank crisis of 1931–32, when extreme bitterness was found everywhere. Now was the moment, so we all hoped, when the social crisis would gradually be solved peacefully, but instead of that there began—a counter revolution.

How can one describe such behaviour? What is there left to be said when the patriotism of Thaelmann and of other Socialists is dragged in the dust, systematically, day by day, by every means and on every opportunity, so as to justify these actions?

Hitler himself has given us the answer. He reveals to us his "shameless spiritual terrorisation," when he repeatedly, insolently, stubbornly, persists in spreading abroad a lie until it is finally believed.[1]

In doing so he makes allowance for the instinctive extremist attitude of the masses.[1]

To carry out this terrorisation, the National Socialists have built up an organisation which boasts of having freed Germany from "Marxist rule." "Learned jurists" have not shrunk from giving this organisation a "legal" cloak. It calls itself the "People's Führer-State."[2][3]

[1] *Mein Kampf*, pp. 44, 201, 202. And see also pp. 48–49.

[2] Prof. Wilhelm Merk, Tübingen, *Protection of the Constitution* (*Verfassungsschutz*), 1935, p. 647.

[3] That means a racial-national State (*Völkischer-Führer Staat*).

CHAPTER III

THE PEOPLE'S FÜHRER-STATE

A. Race and the Mass

(*a*) *Community, Führer* (*Leader*), *and Followers :*

In a modern State the fact that a preponderant part of its population speaks the same language and is descended from the same stock is doubtless of importance ; but it is the living together in political organisation that makes the nation—the legal community. And social intercourse between nations makes possible the mutual exchange of ideas and merchandise.

Italian Fascism has become part of the fabric of the State, and recognises its supremacy. Thus, however divergent our views of it may be politically, we are given a clear insight into its foundations.

To the Nazi, his system is " unique " because for it the people represent " a capital asset, inherently and historically inalienable." [1] National Socialism does not owe its existence to the State, but stands above it, and uses it as only one of several means to its ends. Thereby the State loses its importance as an independent entity.[2] It is not a legal community born of the will of individuals, but a " people's community."

This is to be regarded as a living, biological entity. It exists, irrespective of political frontiers, in all persons of the

[1] Prof. Dr. G. A. Waltz, Breslau, *Deutsches Recht* (*German Law Periodical*), 1935, p. 317.

[2] Prof. Dr. Reinhard Höhn, Berlin, *Volk, Staat und Recht* (*People, State and Law*), see *n.* 1, p. 82, reprinted in *Grundfragen der Rechtsauffassung*, 1938, pp. 22, 25, 26.

same race, who are not individuals dependent upon themselves, but " bearers of the communal spirit." [1]

The " Führer "—the word is said not to be a translation of the Italian *Duce*—is that " bearer of the communal spirit " who is capable of acting " in the spirit of the community " and also of pointing the way and marching in advance of the community. In relation to him, the latter are called " Followers."

This notion of " *Führer* " (Leader) and " Followers," it is said, has destroyed the old legal system.[2] The presence of the third factor essential to the people's community, *i.e.* the " communal spirit," is guaranteed by the racial identity of the members of that community. Scientifically speaking, it cannot be understood in the usual way, and it is therefore called a " reality of a different species." [3] It is *only* those of the same race who are capable of being possessed by this communal spirit. This must happen if they obey the Führer, who, being " the most powerful *Gemeinschaftspersönlichkeit*," [4] has created the people's community anew.[3] This is alleged to have originated in the comradeship of the soldiers, and their common experiences, at the front during the Great War, and to have lived on in the National Socialist Movement.[3] It is the task and the aim of the Führer to maintain the communal spirit by means of communal experience.

All members of the nation who are of the same race must be so possessed by this communal spirit that their whole lives and their every action shall be guided by it. In that way they are transformed into *Gemeinschaftspersönlichkeiten*. *Persönlichkeit* and community stand in the same relationship to each other as the individual and the mass.[3]

Thus we see an attempt to lay down juridically the relations between the Führer and the mass as the only

[1] Höhn. (See *n.* 2, p. 126); cf. *post* pp. 279, 280, 296.

[2] Höhn, Berlin, *German Law*, 1935, p. 296 *et seq.*

[3] Höhn. (See *n.* 2, p. 126.) *Op. cit.* p. 8.

[4] Literally " community-personality," a Nazi neologism intended to mean " the person in whom the communal spirit is carried to its highest power."

foundation for the existence of a nation. And in this only those human attributes are developed that the " individual " acquires through his transformation into a part of the mass, and that Hitler, in his masterly understanding of mass-psychology, has recognised.[1]

He has evidently—though perhaps unconsciously—made use of the discoveries of psychologists such as Le Bon, McDougall, Freud, Trotter, and others. He received his first practical experience in the Reichswehr in Munich, in the service of which, after the War, he acted as informer against workers with left political leanings, and then as propaganda officer and agitator. He also thought highly of the war- and atrocity-propaganda of the former enemy powers, and studied it with great thoroughness.[2] Thus his aim is to raise a purely temporary war measure to the level of a political maxim, and to carry it out to the full extent of its implications through his " Minister of Enlightenment and Propaganda." To be the leader of his people simply means to him to be able to move the masses.[3]

The works of the above-mentioned psychologists help us to understand the " People's Führer-State." Their researches into mass-psychology [4] show that people in the mass devote themselves to an ideal more intensely than an individual does, but that they become automatons without a will of their own, whose conscience and sense of responsibility gradually become atrophied. They degenerate to an earlier stage of development—that of the wild animal ; they are cruel, and continually require stronger and stronger stimuli ; and their intellectual attainments and their desire for truth decrease proportionately. The place of these latter qualities is taken by illusions, which their blind faith in authority causes them to accept from the Führer they idolise. They revere tradition, and have a profound aversion to innovations.

[1] See pp. 48–49.

[2] *Mein Kampf*, pp. 199 *et seq.*

[3] *Mein Kampf*, p. 650.

[4] Sigmund Freud, *Massenpsychologie und Ich-Analyse* (*Mass-Psychology and Self-Analysis*) 1931. *Das Ich und das Es*, 1923, p. 11. Hans Kelsen, *Der Soziologische und der juristische Staatsbegriff* (*Doctrine of State*), 1922, pp. 15 *et seq.*

Science assumes the explanation of this process of change to be that man possesses a twofold consciousness: that of the "Ego" and that of the "Ideal Ego." Comparison of the Ego with the Ideal Ego results in psychological tension whose strength increases with the degree of culture of the subject. As a result of serious misfortunes this psychological tension often develops an inferiority complex, which makes him willing to resign the position of Ideal Ego to the Führer, provided the latter behaves egotistically and autocratically. At the same time, it is possible for persons who in themselves are unfitted for the exercise of power to be chosen as Führer.[1]

If in the light of this knowledge we examine the personalities and careers of the founders and pillars of National Socialism, and events in the new Germany, we shall arrive at some astonishing conclusions.

So also we shall understand why that country can never settle down peacefully and why Hitler impresses upon the people that too great intellectuality and too much independent thought on the part of the members of the community impair the nation's strength.[2] He needs primitive people who will allow themselves to be led by propaganda. For him, therefore, the German working class forms that broad mass that with the help of propaganda of the right sort will guarantee the victory of his "national idea."[2] For him the nation is merely an army, which would be worthless if every soldier had received the training of a General.[2] All he has in mind when he talks of the value of an individual is his fitness for leadership, or the individual simply as a *Gemeinschaftspersönlichkeit*.[3]

Anything to do with Roman Law is taboo, because it has established clearly and for all time the difference between State and individual, between public and private rights. This difference has been abolished.[4]

The obsequious mass is induced to accept the new conditions by the pretence that these are derived from old

[1] See *n.* 4, p. 128.
[2] *Mein Kampf*, pp. 509–10.
[3] See *n.* 4, p. 127.
[4] Merk (see *n.* 2, p. 125), p. 640.

German traditions, though in fact they have nothing in common with them.

It is to be regretted that patriotism, which in Germany has been whipped up to such a high pitch, cannot be allowed to develop along the right paths. In these days of great centralisations it is impossible to prevent the establishment of mass movements ; but provided the individual side of mankind is not neglected, its advantages can be utilised and its dangers diminished. That is the task of the law.

In my opinion the greatest danger for Germany is the one-sided use of mass-psychosis. It would be well if it could be destroyed as systematically as it is imposed ; but that is a difficult task, for even if the whole nation were to be told the truth to-day, they would refuse to recognise it as long as they were under the spell. Yet the splendid gifts of the German people, which have enabled them to contribute so much of value to human culture, are not yet dead. National Socialism is not Germany or Prussia ; but it is the tragedy of the German people that so long as the Third Reich lasts they can never be their true selves.

(*b*) *The Will of the Führer and the "Führer Principle" :*

The will of the Führer is expressed by means of commands. These commands, however, are not the orders of an individual, but the expression of the communal spirit, of the community-organisation. The Führer, therefore, cannot be strictly regarded as a dictator, or as a sovereign, an instrument of the State, nation, or other corporate body, or as an arbitrator.[1] None of these designations conveys the idea of the " uniqueness " of the Führer or his " indissoluble unity " with his followers.

Nazi jurists admit that they are not yet in a position to define the " Führer-idea " in positive juridical terms.[2] Nevertheless they cling to that conception as being in full accord with the law of the land.[2] And they get out of the difficulty by stating that the " new " juridical thought has

[1] Höhn, see *n.* 2, p. 127.

[2] *Ibid.*, see p. 126, *n.* 2.

not yet reached the point of fully comprehending the idea of the "community," and that it must, therefore, still make very considerable use of the old individualistic terminology.[1]

Lack of confidence between Führer and followers is impossible. Even if his commands seem to them to be incomprehensible, they, nevertheless, obey him as the strongest "bearer of the community spirit"—a duty, moreover, that is imposed on them by the Führer principle.

This principle calls for authority on the part of the Führer and the deputies appointed by him over all those below, and responsibility on the part of the latter to those above.[2] It is no part of the duty of representative bodies to pass resolutions; all they have to do is to advise the Führer, with whom alone the decision rests, and who indicates to his advisors the work to be done. He vouchsafes no glimpse into the workings of his mind, but only indicates a few points in broad outline.[3]

This supremacy of the Führer proceeds from his "free election" by the people, and is alleged to conform to the idea of "true German democracy."[4] Actually no duke or king in ancient Germany ever exercised such despotic power, for they could always be called to account by freemen in the "Thing."

In countries with democratic constitutions an attempt is made to avoid, by triple partition of State authority, the accumulation of too much power in one pair of hands. Distinction is made between the legislature, the executive and the judicature, and the power derived from the exercise of each of these functions is "balanced" by placing it in several hands. These arrangements vary in different democracies. Under the Weimar Constitution the legislature consisted of the Reichstag; the Government, subject to the confidence of Parliament, was the executive; while the administration of justice was in the hands of independent courts, subject only to the law of the land.

The "People's Führer-State" is based on the idea of the

[1] Höhn, see p. 126, *n.* 2.
[2] *Mein Kampf*, p. 501.
[3] *Ibid.*, p. 508.
[4] *Ibid.*, p. 99.

unity of State authority. In the Will of the Führer are united legislature, executive and judicature. All three are "functions of leadership."[1][2] Even the administration of justice is no longer an independent function, but merely carries into effect the Will of the Führer.[3]

The subordination of the law to the Will of the Führer is a factor of the greatest importance, since the government of the country and the administration of justice are based upon its application.

Whether the law is unwritten, *i.e.* based on customs and precedents, or, as is mostly the case in Germany, consists of written statutes, it has its own life. The conceptions contained in it grow and develop, as regards both thought and its expression, independently and in accordance with their own inherent nature. Research in the domain of philosophy, political economy, sociology and psychology has also helped the work of the jurist. He observes how and why man endeavours to force the laws to serve his own interests. So far as their subject-matter seems apt to his purpose, he will often fit them to it by means of suitable "interpretation"; and he will do his best to avoid laying down inconvenient rules and regulations. The daily struggle for existence is mirrored in the law and its application. It is often very difficult to find the answers to questions that arise from this, *e.g.* whether the gulf between "law" and "ideal justice" has not widened;[4] whether the discrepancy should be remedied by the legislature or the judicature; and to which branch of learning referred to above recourse should be had for assistance.

For the Nazi these problems no longer exist. The Will of the Führer provides the solution. Just as the new "people's community" has done away with the difference between "State and Society,"[5] so the boundaries between

[1] Höhn, see *n.* 2, p. 126, *op. cit.* pp. 13, 16, 22, 27.
[2] Merk, see *n.* 2, p. 125, *op. cit.* pp. 637, 645.
[3] Tigges, see *n.* 2, p. 88, *op. cit.* pp. 173, 174, 176.
[4] See pp. 10–11.
[5] Höhn, see *n.* 2, p. 126, *op. cit.* pp. 10, 25.

"custom," "law" and "ideal justice," [1] and between the legislature, the executive and the judicature,[2] have also been done away with by the Will of the Führer, and conflict of interest among his followers no longer exists.[3] The Will of the Führer is the source of, and inspiration for the code regulating the life of the German people, and this is identical with the "law" in the sense of "ideal justice." [1 4] This "unique" people's law cannot be explained by reference to abstract conceptions of law that claim to be valid for all peoples and all times.[1]

From this it follows that there is no room in this code regulating the life of the German people for the principle that "all men are equal in the eyes of the law." The exclusion of those of other race, for example, is not an infraction of the law, but carries out the German people's law of equality.[5]

Nor is the Führer personally bound by the law, although it is founded on the promulgation of his Will. To-day he may permit what he forbade yesterday; he may damn to-day what yesterday he extolled. He may at his absolute discretion intervene in any department of life whatever, and decide the means and methods to be adopted. He may decree a general law, or make special regulations in any individual case. By a stroke of the pen a fortune may be taken away and transferred to another by an order against which there is no appeal, or by "voluntary" sale; claims arising out of private contracts may be set aside and appeals to the courts forbidden. One man may kill and be a hero. But if the victim, under threat of death, dares to defend himself, he is a criminal. The Führer decides at his own absolute discretion the appropriation of public moneys; not even the amount of the expenditure is published.

The greatest danger of this state of affairs arises from

[1] Höhn, see *n.* 2, p. 126, *op. cit.* pp. 13, 16, 22, 27.

[2] Prof. Carl Schmitt, Berlin, *Deutsche Juristenzeitung* (*German Lawyers' Journal*), 1934, p. 776.

[3] Höhn, see *n.* 2, p. 126, *op. cit.* pp. 10, 25.

[4] Göring, *Deutsche Justiz* (*German Justice*, periodical), 1934, p. 881.

[5] Maunz, see *n.* 1, p. 82.

the merging of the legislature and the judicature in the political executive. They have been deprived of their own functions—a fact that is welcomed by the Nazis, who claim that the law has thereby assumed the quality of something rooted in nature and is free of the taint of intellectuality. From this it is an easy step to the rule : " What benefits the German people is right, what harms it is wrong." [1]

It is true that the Nazi legal jargon has nothing " popular " about it. By its very nature it must remain abstract, and hardly comprehensible to the layman. As a result of continual change the laws suffer from lack of clear arrangement. Often their authors strive to " approach the people " by means of remarkable preambles. An example of this is to be found in the Law for the Protection of Nature of 26th June 1935, as follows :

> " To-day as of yore, Nature in field and forest is the desire, the joy and the recreation of the German people.
>
> " As compared with former times the appearance of our countryside has been fundamentally altered ; in many respects its garment of vegetation has taken on a different aspect as a result of intensive forestry and agriculture, one sided clearance of the land and the cultivation of coniferous forest. And with the disappearance of its natural habitat, the field and the woodland, a rich variety of fauna has also vanished.
>
> " These developments have often been an economic necessity ; to-day we see only too clearly the loss, economic as well as artistic, resulting from this metamorphosis of the German countryside.
>
> " The movement for the fostering of ' Monuments of Nature,' which arose around the turn of the century, could be only partially successful because certain essential political and ideological conditions were lacking. It was not until the metamorphosis of the German people that the necessary conditions for the effective protection of nature were created.
>
> " The German Government conceives that it is its duty

[1] Dr. Frick, Minister of the Interior, at the Leipzig Meeting of the German Lawyers, 1933.

to assure even to the poorest member of the community his share in the natural beauties of the Fatherland. It has therefore decreed the following Law for the Protection of Nature, which is hereby promulgated : . . . "

The Nazis indignantly deny the suggestion that no single human being is capable of bearing the burden of such enormous power, and that evil will come of the exaltation of the will at the expense of the spirit, pointing out that, in former days, when her spirit was disproportionate to her will, Germany gained no political triumphs. In the eyes of the Nazis, the Führer is the " greatest law-giver of the German people.[1] He is one of those men who are sent into the world once in a thousand years to bring the ' heroic law ' to their people and to show them the way."[2] The Nazis ridicule the notion that in order to eliminate irresponsible influences it is necessary for a civilised people to have any rights in the choice of the counsellors and collaborators of the head of the State. Their cry is : " Führer, command ! We will obey ! "

Nowhere are any bounds set to the absolute power of the Führer. It is, indeed, intended to be unlimited. The ideological explanation of this is to be found in Hitler's book, *Mein Kampf*, and in Alfred Rosenberg's *Mythus des 20. Jahrhunderts*. Though the latter emphasises that he is only recording his personal views, it should be borne in mind that he is Hitler's " Commissioner for the ideological training of the National Socialist Party."

The theories of the new " Professors of Jurisprudence " are founded on these books, as are the countless other Nazi writings on every possible subject.

The " regulations for national life " are alleged to be in the very blood of the German people—so much so, indeed, that they do not require to be laid down in black and white. They are kept alive in the minds of the people by such catchwords as, " The individual is nothing, the

[1] Frank, Reich Minister and Reich Leader of the German Lawyers, in *Law Weekly*, 1938, p. 2633.

[2] Frank, *Law Weekly*, 1938, p. 2803.

community is all!" or, "Public welfare before private interest!" [1]

The difficulty was, however, that on Hitler's accession to power the Weimar Constitution was still in existence; and Hitler declared in his speech in the Reichstag on 23rd March 1933, when he asked for four years of power, that that constitution would continue to be the basis of government, and that he would maintain the independence of the judicature, and the Christian Faith, as the unshakable foundations of the moral life of the people. These principles were firmly established in all laws.

Party leaders, on attaining power and responsibility, have often dropped or modified points in their programmes, and bowed before the necessities of practical politics. And, since otherwise his declarations would have been incomprehensible, people assumed that Hitler would do the same.

Looking back to-day, it can be said that the intention to carry into effect the programme of the National Socialist Party, with its whole ideology, was never for one moment given up. This is a process of "legal" revolution, requiring some years for its completion. It is already far advanced but by no means fully accomplished. Nothing therefore is more erroneous than the assumption that peace and quietness will descend upon us as soon as any particular measure in this process has been carried out. It is natural to compare this revolution with others, in which the tempest first raged and then calmed down. In the present instance the reverse is the case. The "revolution" of 30th January 1933 consisted of torch-light processions, after which comparative quiet reigned until the burning of the Reichstag. After that, from the point of view of both internal and external politics, matters became more lively. The mass, regardless of the object in view, craves an ever stronger stimulus for its passions. The people must not be allowed to come to its senses or to reflect!

In spite of the burning of the Reichstag, and of un-

[1] Point 24 of the Party Programme of 24th February 1920.

exampled propaganda, Hitler received, at the elections of 5th March 1933, only 44·6 per cent. of the total votes,[1] which, with the 8·4 per cent. of the Conservatives, gave him a bare majority of 53 per cent. Thus an attempt to introduce the principle of leadership from the start would have met with serious opposition.

Hitler collaborated with his partners in the government for the purpose of attaining and consolidating positions of political power, and so was able to overcome this opposition by means of surprise tactics, cunning, force and propaganda. In certain spheres the construction of the " new State " was proceeded with at once, in others things were allowed to remain until the Führer considered the time ripe for the " change " in them also.

To understand the state of affairs as a whole we must consider this structure and the accomplishment of this change in the principle spheres of the life of the State and the people. These, and the countless new laws that have come into existence, can be explained only by reference to Nazi ideology. Old regulations, made under the Weimar Constitution and the former civil, criminal and commercial law and so forth still remain, but, being interpreted in the " new spirit," they have been reduced to purely mechanical or technical significance. It must again be emphasised that the crux of the matter is the complete revolution in the conception of law and justice, as a result of which security under the law no longer exists. Who knows what the " Will of the Führer " will bring to-morrow ?

The result of placing the law, in this new sense, on the level of a military command, is to turn the country into something very like a military parade-ground ; but the matter does not end there, for the Führer demands complete surrender to his will.

A soldier need not obey a command that infringes a criminal law.[2] Yet one who, under the pretext that he

[1] 288 seats out of 646.

[2] Paragraph 47 of the Military Penal Code of 26th June 1926.

was going to take part in manœuvres, was ordered to Spain for service in the Civil War and who refused to obey the order and demanded to be sent home, was guilty of insubordination, for which he could be punished. He could not claim the protection of the law that forbade German citizens, under penalty, to take part in this Civil War.[1] The law was in effect, and to the extent to which it applied, repealed by the fact that the Führer had given orders for this service.

On the occasion of Mussolini's visit to Germany, it was decreed that 25th September should be a holiday in Munich only, and 28th September in Berlin only.[2] The workers, under the command of the German Labour Front, were ordered to line the streets and to greet the Führer and Mussolini " with enthusiasm " ; and the employers had to pay their wages for the day. Thus the Führer interfered in contracts between the masters and the men, without regard to the wishes, rights or duties of the parties.

A lurid light was also cast on the nature of this new " law " after the annexation of Austria. Up to then the Nazis recognised the Austrian Government, for they concluded treaties with it. Under general principles of law a crime may no longer be punished if the government has quashed the proceedings or has granted an amnesty. Yet Hitler claimed the right to institute criminal proceedings in Austria for acts committed after 30th January 1933, or to execute sentences, even if they had been definitely quashed by the former President of the Austrian Republic.[3]

(*c*) *The Aim of the State :*

Hitler regards the breeding of a race of pure German—primarily nordic-teutonic—blood as the highest aim of the State.[4] He estimates its value only by the measure in which

[1] Law of 18th–19th February 1937 and Administrative Decree of 20th February 1937.

[2] Law relating to Special Holidays, 23rd September 1937.

[3] Decree of Hitler of 23rd November 1938.

[4] *Mein Kampf*, pp. 434, 439.

it is achieved.[1] In face of this, such matters as humanity, the degree of culture as compared with that of other States, and the reconciliation of opposites such as wealth and poverty, are of no consequence whatever.[2]

The Third Reich, therefore, is a biological experiment in breeding; an attempt to convert the German people into a pure nordic race, in accordance with true nordic thought: (*Die Aufnordung des deutschen Volkes im Sinne des nordischen Gedankens*).[3] It is true that Gottfried Feder, the "expounder" of the party programme appointed by Hitler, has expressed doubts as to the success of this experiment, since "little of permanent value can be done in the case of the German people, which is already largely hybridised."[3] But Hitler disregards this difficulty. He considers that to some extent the original racial elements have survived unmixed, and claims that if these had combined with the rest of the people to form a homogeneous racial nucleus, Germany would have attained world domination.[4] Much as he regrets that this did not happen, he welcomes the opportunity of "selecting" the "best" of those in whose veins there is unmixed German blood, and creating from them the Lords and Masters of the people.[5] The "bastard" he looks upon as a "wretched creature," who, though better than his racially inferior parent, debases the blood of the one that is on the higher level.[6]

Among the "original elements" he distinguishes between nordic, dinaric, westisch (western) and ostisch (eastern) peoples, but admits that these are to a certain extent intermixed. These divisions, indeed, are carried still further; thus the fälisch-dalisch race is distinguished from the westisch. The exuberant fertility of the alpine race is in particularly bad odour, since it is alleged to have tainted much good nordic blood in South Germany.[7]

[1] *Mein Kampf*, pp. 435, 436. [2] *Ibid.*, pp. 195, 435, 493.
[3] Gottfried Feder, *The Nazi Party Programme and its Fundamental Principles*, p. 40, German edition.
[4] *Mein Kampf*, p. 437. [5] *Ibid.*, pp. 439, 441, 477, 493, 648.
[6] *Ibid.*, p. 312. [7] Rosenberg, *op. cit.* p. 86.

Hitler's view, which is supported by no known facts, is that the "Aryans" are the only creators of culture in the world, and that the Jews are destroyers of culture. Between the two come all the other peoples, who are the "supporters" of culture. Among the Aryans the nordic-germanic people —the "most precious blood in the world"—take first place.[1] According to the "aristocratic" law of nature, which is contrary [2] to the belief that all men are equal, it is therefore they that by rights should dominate the world.

He does not consider that the Aryan's culture-creating power is the result of his intellectual gifts, which by themselves could only have a destructive effect, but of his capacity to sacrifice for the benefit of the community, and even to the laying down of his life, his interests and personal opinions.[3]

Towards the end of 1934 a friend of mine, a Professor, speaking at an evening party at which a large number of people were assembled, raised the question why Hitler did not sacrifice *his* interests and *his* personal opinions for the benefit of the fatherland. For his pains he was given a long "course of instruction" in a concentration camp.

The breeding and fostering of the "nordic *Erbmasse*"—the inherited physical and spiritual attributes of the nordic race—satisfy, we are told, the longing of the people for an ideal of masculine beauty as symbolised by the body and soul of a nordic "hero." [4] In this case, however, the Nazis, probably as a result of self-contemplation in the looking-glass, have been forced to admit certain qualifications. As a way out of their embarrassment, Rosenberg has invented the "race-soul," whereby the number of those possessed of the nordic-germanic *Erbmasse*, generally estimated at 6 per cent. of the population, is at once increased. It is claimed that those who, though unendowed with any of the physical attributes of the "nordic hero," fought for Hitler in the front line, proved thereby, and

[1] *Mein Kampf*, p. 439. [2] *Ibid.*, pp. 421, 782.
[3] *Ibid.*, p. 326.
[4] *Ibid.*, p. 453. Rosenberg, *op. cit.* pp. 291, 447, 448.

particularly by their courage in assuming leadership and responsibility before history, that they were possessed of "nordic souls." [1] [2]

Thus they cannot but be possessed also of valuable drops of nordic blood—that magic bond that links together all German people.[3] Those in whose veins runs foreign blood can never manifest the qualities of the nordic soul, for "the soul is race seen from within." [4]

The "fact" that in many people the nordic *Erbmasse* comes to light more clearly in the spirit than in the body is used by Rosenberg as a warning not to measure the German with a foot-rule or by reference to head-index-figures only.[5]

According to him probably 80 per cent. of those who conform to the nordic type physically have the nordic soul. The 20 per cent. of nordic heroes, whose souls do not correspond to their bodies, have, like all Germans who are antagonistic to Hitler, been spiritually poisoned by inferior races, notably the Jews. It is necessary to inculcate nordic ideas in them by appropriate "education."

This ideology is "branded" on the heart and brain of the rising generation, the aim of whose education is first, physical perfection, and secondly, the development of the will and of the power to form decisions.[6] Education in the usual sense—the imparting of knowledge—takes third place only. It must not unduly burden the youthful brains, in which the belief in their superiority as Germans, and their invincibility by all other nations, must be fixed for ever.[7]

The deplorable mental confusion caused by this doctrine of race, for which there are no scientific grounds whatever, was illustrated by the case of a young man who came to me for advice in 1934. He had had his hair dyed, and during the process the skin of his head had been burnt. He wanted me to represent him in an action for damages

[1] Rosenberg, *op. cit.* p. 596.
[2] *Mein Kampf*, pp. 100, 441.
[3] Rosenberg, *op. cit.* p. 577.
[4] *Ibid.*, *op. cit.* p. 2.
[5] *Ibid.*, *op. cit.* p. 596.
[6] *Mein Kampf*, p. 452.
[7] *Ibid.*, p. 456.

against the hairdresser. When I expressed astonishment at his having his hair dyed at all, he cut me short by informing me that, although spiritually he was entirely nordic, and physically mainly so, yet, owing to the infusion of " western " blood through one of his ancestors, he had black hair. This he had had dyed so that his appearance should be completely nordic.

That this confusion of mind affects people's attitude even to great historical figures in the intellectual world I realised when a descendant of the poet Lessing said to me early in 1935 : " You surely don't imagine that ' Nathan the Wise ' would have been written if Lessing had known Hitler ! "

(*d*) *Method of " Racial Selection " :*

The legislation of the Third Reich for this purpose has hitherto been purely *negative.* " No more shall Jewish blood be mixed with German blood : spiritually and physically, the German community must be purged of it." From April 1933 [1] up to the promulgation of the Nuremberg Laws,[2] the only distinction made was between " Aryan " and " non-Aryan." The Nuremberg Laws, however, and the administrative regulations relating to them, differentiate between German and cognate blood on the one hand, and Jews and Jewish hybrids on the other. Thus it became possible to treat nations that, though non-Aryan, were " culturally related " to the new Germany, such as the Hungarians, Finns, Japanese, and Arabs, as if they were of teutonic blood.

The beginnings of a *positive* legal regulation giving people of German blood privileges over other citizens of the State, even if these are of cognate blood (*i.e.* not Jews), are to be seen in connection with the organisation of the Protectorate of Bohemia and Moravia.[3] The German

[1] Law for the restoration of the professional Civil Service of 7th April 1933, with numerous supplementary and administrative regulations.

[2] Of 15th September 1935.

[3] Edict of Hitler of 16th March 1939.

(*volksdeutsch*) inhabitants have been declared German citizens, and all the rest citizens of the Protectorate. Hitler described its establishment as a measure of self-preservation. He also declared that the German people had proved by its thousand-year-old history that, thanks to its characteristics and its greatness, it alone was qualified to bring law and order to central Europe.[1]

No *positive* legal regulation exists that favours nordic people or distinguishes between the various German races ; but this aim is achieved by the organisation and practice of the Nazi Party, which dominates the whole life both of the people and of the State. For membership of the Party and its specially favoured subsidiary organisations, such as the SS (Black Guards), SA (Storm Troopers), Nazi Students' Federation and Nazi Teachers' Federation, the *grosse Ahnenpass*—" long genealogical passport "—is essential. This is a document proving that the holder can boast of at least sixty-three ancestors of pure " Aryan " blood, *i.e.* for six generations, which means back to about 1800. For membership of other organisations only an *Ahnenkurzpass* or *Ahnenspiegel*—the " short genealogical passport "—is required, proving the holder's ancestry back to the grand-parents. Since the party leaders, and, for example, the members of the SS and SA, must obtain special permission to marry, before the granting of which a searching investigation of the bride's ancestry is made, a system of eugenics in the approved Nazi sense is made possible. It is intended to create a succession to the Führership by selecting a limited number of boys and educating them in special schools (*Ordensschulen*).

Who, in the process of this physical and spiritual " nordic orientation," will be chosen to share the delights of the " German people's life," is not yet known. In principle Hitler's wish is that a *Reichsbürgerbrief*—a patent of citizenship—should, at a suitable ceremony, be bestowed upon the young German after completion of his service in the armed forces, and upon every German woman after

[1] Edict of Hitler of 16th March 1939.

her marriage.[1] But for the War, he himself would never, under this scheme, have acquired German citizenship, for physically he was not up to the standard required by the stricter conditions prevailing in peace time for entry into the army. To allow time for a thorough examination, physical and spiritual, of every inhabitant of the country, a system of *provisional* citizenship has been set up,[2] the rights under which, however, may, if he thinks fit, be withdrawn by the Minister of the Interior. Thus, for the time being, even those whose blood qualifies them for citizenship hold this right on sufferance only, and they must " prove by their conduct that they are both willing and able to serve faithfully the German Reich and people."

In deciding in practice to qualify the rule as to selection from among those of German blood only, the authorities have probably been influenced by legal difficulties relative to the singling out of the Jews and Jewish hybrids, although these only account for 1.5 per cent. of the total population.[3]

So much has been written about the Nuremberg Laws, and the position and treatment of Jews in new Germany, that I confine myself here to stating that the attempt to reconcile the two aspects—the " natural " and the " legal " —in which the Jews are regarded, for the purpose of differentiating Jews from those of German or cognate blood, has failed.

In this connection I have not in mind such miracles of nature as happened in the case of a full-blooded Jew known to me, who had a " pure Aryan " son, or of the Jewish wife of a man of pure German blood, who was transformed by the grace of the Führer into an Aryan. I set out the position in accordance with the strict application of the law :

Even those who have three grandparents of full Jewish blood and one of German blood are regarded as Jews. Thus it appears that the 75 per cent. of Jewish blood is

[1] *Mein Kampf*, pp. 459, 491.

[2] Decree under the Law of Citizenship of 14th November 1935.

[3] Administrative Decree under the Law against Foreign Control of Schools and Universities of 25th April 1933.

regarded as so preponderant that the 25 per cent. of German blood is, in spite of its " better quality," overwhelmed by it. The case is different, however, when the hybrid parent is not the issue of a marriage between a full-blooded Jew and a German but between two hybrids. Here, although the proportion of three to one remains, the full-blooded Jew is " promoted " to the rank of hybrid because he has not three grandparents of full Jewish blood but two of full Jewish and two of half Jewish blood.

It is of no advantage to the grandchild to be able to prove that of his three Jewish grandparents one was of German blood and was only converted to the Jewish faith because, perhaps, the Jewish father-in-law only allowed his daughter to marry him under that condition. The reason for this is that a grandparent's Jewish faith is *prima facie* evidence of his race. In order to obviate difficult investigations so far back, no proof is accepted in refutation of this " evidence," so that a half-German may be " degraded " to the rank of full-blooded Jew.

A marriage between a Jew of German nationality and a foreigner of German or cognate blood is valid. The wife becomes a German national, but the children of the marriage are now regarded as full-blooded Jews because 50 per cent. hybrids are only recognised in law as such if they are the issue of a marriage contracted before 17th September 1935.

Remarkable to relate, marriage between half-blooded Jews who possess provisional right of citizenship is permitted without question, although according to Mendel's Laws, on which the doctrine of race is founded, it is the repeated crossing of hybrids that is especially prejudicial to descendants.

Apart from the question of Jewish blood, the Registrar is forbidden to celebrate a marriage if there is reason to suppose that the issue will be detrimental to the purity of German blood.[1] Here the authorities have in mind the question of mulattos born during the French occupation of the Rhineland, and of gypsies. If any suspicion of this

[1] Paragraph 6 of Administrative Decree of 14th November 1935.

kind exists, the contracting parties must produce a certificate of fitness for marriage, showing not only that it would not be detrimental to the purity of German blood but also that the parties are not subject to any diseases entailing prohibition of marriage [1] and, in certain circumstances, compulsory sterilisation.[2]

The " Eugenic " Marriages Law contains certain good provisions, but also others based on problems that have not yet been solved by science. And it has been strained by undue coercion. We cannot put faith in a law whereby Beethoven, for example, would not have been born, or might have been emasculated.

(*e*) *Race and the " Enemy " as " Mass Suggestion " :*

Hitler's racial doctrine, which finds its practical outlet in the campaign against Jews and gypsies, takes on a special note through its connection with " Mass-psychosis." (For the time being the significance of his doctrine in the case of negroes is only theoretical. To educate them as lawyers, teachers, clergymen, or singers he calls " poodle-training " and the " profanation of the highest Culture-Race.") [3] People of other races, and those of German race who " betray " their blood and their soul by disobedience to the Führer, are " enemies " to be exterminated by any and every means.

Large numbers of the population, and many lawyers—myself included—realised too late that this was the case.

At the end of 1934 I appeared on behalf of a physician in the Court of Appeal. He was in practice in a town near Berlin, and, because he was a Jew, had been expelled from his Medical Association after years of membership. He demanded return of the subscriptions he had paid, or alternatively confirmation of his rights as a member in accordance with those subscriptions. He had won his case in the lower court. At the appeal the Association was

[1] " Eugenic " Marriage Law of 18th October 1935 and decree of 29th November 1935.

[2] Law of 14th July 1933–26th June 1935 and Administrative Decrees.

[3] *Mein Kampf*, pp. 478–9.

represented by counsel of strong Nazi sympathies, who asked for the verdict of the lower court to be reversed on the grounds that in the Third Reich a Jew must, from the personal, moral, and social points of view, be treated as dead. I asked him whether in that case the Association would be prepared to pay to the doctor's wife the widow's pension provided by the Association's statutes. To this he replied in the negative. On the grounds that my client could surely not be regarded first as dead and then, simply because the other side was unwilling to pay the pension, as alive, I succeeded in obtaining a verdict for him in the Court of Appeal. A remark I made about a "living corpse" introduced a touch of humour, which brought relief to a situation that was felt on all sides to be painful. Observations had already been made to the effect that the strong views of the Nazi counsel were the outcome of his "revolutionary" feelings, that they were not meant to be taken too seriously, and that they would soon be forgotten.

To-day that doctor would find no counsel to represent him. In the administration of justice the views of our opponents' counsel in that case have gradually come to prevail.[1] They were not the end, but the beginning, and are now prevalent in every sphere of life. In November 1938 a number of Jewish synagogues were burnt down. No Jew, even if he fought in the Great War, can now be a doctor of any kind,[2] lawyer,[3] patent lawyer,[3] or chemist,[2] while Jews are, with diminishing exceptions, forbidden to engage in trade or industry.[4]

[1] *E.g.* Judgment of the Supreme Court of 27th June 1936, *Law Weekly*, 1936, p. 2531.

[2] 4th to 8th Administrative Decrees under Law of Citizenship of 25th July 1938 and 17th January 1939.

[3] 5th and 6th Administrative Decrees under Law of Citizenship of 27th September 1938 and 31st October 1938.

[4] Decree of the 22nd April 1938; Regulation of 26th April and 24th November 1938; 3rd Administrative Decree under Law of Citizenship of 14th June 1938; Law regarding alteration of industrial system of 6th July 1938; Decree for exclusion of Jews from German economic life of 12th November 1938, with Administrative Decrees of 23rd November and 14th December 1938.

Their property must be declared and is subject to special control by Göring, who, as Commissioner for the Four Years Plan, sees that it is devoted to the best interests of German industry.[1] Jews can be ordered by the police to liquidate their businesses within a specified time, or to sell them in the same way as their landed property.[1] Further, Göring has imposed on all Jews of German citizenship collectively, a " contribution " of a thousand million marks " for the hostile attitude of world Jewry towards the German people and the Reich, which does not even shrink from dastardly murder." [2]

This is collected as a tax by the Minister of Finance.[3] All Jews except those of foreign nationality must hand over to public buying centres that have been established by the Reich all valuables belonging to them, consisting of gold, platinum or silver, and also all precious stones or pearls.[4] The valuation of the objects, and the decision as to whether any, and if so what, payment shall be made for them, is within the discretion of the Reich Minister of Economics. He is also authorised to grant exemptions from this obligation.[4]

The police have the right to forbid German or stateless Jews to enter certain specified streets or buildings.[5] Jews who are in need must look to Jewish charity for relief; their claims for public assistance are quite ruthlessly cut down.[6]

Jews are prohibited from going to theatres, cinemas, lectures and art exhibitions.[7] Sanction to provide for their own cultural needs is within the discretion of the competent Party Chief of the locality. The permission

[1] Decrees of 26th April 1938, 18th June 1938 and 3rd December 1938.

[2] Reference here is to the assassination of vom Rath, Secretary at the Germany Embassy in Paris, by the Polish Jew, Grynzspan.

[3] Law regarding an expiatory offering by Jews of German citizenship of 12th November 1938.

[4] Directions of 21st February 1939.

[5] Police Regulations of 28th November 1938.

[6] Decree of 19th November 1938.

[7] Direction of the Reichskulturkammer of 12th November 1938.

granted in exceptional cases for Jewish children and young people to attend the public schools and universities was withdrawn by order of Rust, the Nazi Minister of Education.[1] For some time already, Jews have been obliged to obtain identity cards from the police.[2] Those whose names are not obviously Jewish have henceforth to use the names "Israel" or "Sara," in addition to their own names.[3] Yet Old Testament names, such as Joseph, Jacob and Joachim, are regarded as German! Evidently this remarkable anomaly was included in the law for the benefit of Messrs. Joseph Göbbels, Joachim von Ribbentrop and other party bosses, such as Jacob Sprenger, *Gauleiter* (Regional Leader) of Hesse.[4]

The extirpation of the "enemy" proceeds. Stages on the way to this objective are, as I learn from authoritative sources, the enclosure of the Jews in a ghetto, the wearing by them of a distinctive dress, and prohibition of the use of German, either in speech or in writing. According to the Nazi, the Jew is speaking Hebrew even if he makes use of the German language, and so this also stands in need of racial protection!

But in addition to all these measures directed against the Jews, there exist a whole series of legal decisions manifesting inextinguishable hatred of the "enemy" in the afore-mentioned double sense.[5]

In this the first step, as must be mentioned with the deepest regret, was taken with the collaboration of President Hindenburg. At the request of the Hitler Government and acting on his right to issue emergency decrees,[6] he granted an amnesty[7] ensuring impunity for all offences committed in the cause of the "national resurrection," or of

[1] Middle of November 1938.

[2] Decree concerning Identity Cards of 22nd July 1938; Third Proclamation concerning compulsory identity cards of 23rd July 1938.

[3] Administrative Decree of 17th August 1938.

[4] The *Gau* (region) is the main subdivision of the Reich for Party purposes.

[5] See p. 146.

[6] Article 48, paragraph 2, of the Weimar Constitution.

[7] Decree of 21st March 1933.

the "German fatherland." By this, all Nazis were liberated, whether they had committed murder,[1] like the "heroes" of Potempa, manslaughter, or other crimes whereby life was endangered, such as dynamiting. Members of the centre or left parties, on the other hand, had to work out their punishment for minor offences, or be kept in a concentration camp.

A double measure, thus, of injustice.

Again, after the annexation of Austria, an amnesty was granted in every case of offences committed by persons "carried away by their zeal" in the fight for the "National Socialist"—no longer the "National"—cause.[2] The men who had been convicted and executed for the murder of Dollfuss, too, are now exalted as national heroes, like the murderers of the former Ministers, Erzberger and Rathenau. And now the Hitler Youth hold meetings at their monuments, set up guards of honour and swear fidelity to the Führer!

Let those who even now cannot imagine a State carrying on a campaign, with members of its own people as the "enemy," take note of the following: a Nazi wounded before 13th November 1933, in the course of political disturbances, and whose health was thereby affected, receives a pension in the same way as a soldier who has fought for his country.[3] Amnestied criminals, like the Potempa murderers, may in this way receive a State pension if, at the time they commit their crimes, they are wounded by their victims acting in self-defence.

Again the same regulations were introduced into Austria. They were to come into force one week after[4] the promulgation of the decree.[5] Thus the Nazis "fought" for a week, during which they were covered by the State against the risk of death or disablement. Among the provisions for "compensation to soldiers for damage suffered in war," is to be found another typical innovation,

[1] See p. 124.
[2] Amnesty Law of 30th April 1938.
[3] Law and Administrative Decree of 27th February 1934.
[4] 11th April 1938.
[5] Of 4th April 1938.

viz. pensions for children from fourteen to seventeen years of age who have been wounded while taking part in political disturbances. If, purely as a result of these " national " activities, their attainments at school show deterioration, they nevertheless receive their remove and are given special privileges,[1] while " enemy " children are forced to leave school.

(*f*) *The Family as loosener of the ties that form the Mass :*

Sexual love cuts across the bonds that hold the mass together as a community, whether these ties rest on nationality, social classes or anything else. That is probably the true reason why it is regarded by the Nazis only as a means of propagation and not as a factor in the creation of culture. In their opinion, " women lack the power of seeing things in their true perspective, either intuitively or intellectually." [2] The family is not the main support of the State, which is the " product of a combination of men steadily pursuing a given aim." [3]

In the Third Reich women have been degraded to the level of child-bearing machines. For each child in excess of three that she brings into the world and which is of good German stock (*deutschblütig*) and capable of transmitting the " nordic heritage " (*erbtüchtig*), a " Cross of Honour " is bestowed upon her as a " German Mother." [4] In order that even here all individual growth shall be nipped in the bud, love of woman is made the subject of frivolous witticisms, and a department of the people's life in which the orders of the authorities must be obeyed. No longer is there any such thing as undisturbed domestic happiness, for the community comes before the family and destroys it when it shows signs of developing in its own way.

Shortly before my departure from Germany I advised a factory foreman in the matter of his divorce. He was an excellent workman and took no interest in politics. His

[1] Decree of the Prussian Ministry of Education of 20th April 1933.
[2] Rosenberg, *op. cit.* p. 483.
[3] *Ibid.*, *op. cit.* p. 485.
[4] Decree of 16th December 1938.

marriage had been a love-match, and he and his wife had lived together in perfect harmony, until one day the wife joined the Nazi Women's Organisation, and as a result of her new activities began to neglect her home and family. She no longer called their two sons by their real names, but "Hitler" and "Röhm." After the latter had been shot, the husband told her to call them by their proper names. She refused to do so, and tried to think of another suitable name for the second son. Marital discord became acute. One day the husband demanded that all the pictures of Hitler in their bedroom should be done away with, and, in the hope of restoring their old happy family life, forbade his wife to occupy herself with politics. She thereupon brought an action for divorce, which she won, the husband being regarded as the guilty party. It was stated that it was an honour for a German woman to work in the Nazi Women's Organisation, a point to which the husband was advised to give his serious attention. According to the Will of the Führer the interests of the community take precedence of those of the family, a fact that his wife had explained to him over and over again ; and to forbid her to work for the Nazi Women's Organisation was so serious a breach of his marital obligations that she could no longer be expected to submit to the marriage tie.

After judgment had been delivered the man said to me : "Now I've got to live alone, without wife or children. Why ? My wife would certainly come back to me if I could only get her to take her mind off these crazy politics. They won't let me do it—why ? "

A woman who, though divorced, was innocent, was in the same despairing frame of mind. The Court responsible for the guardianship of wards had taken her three daughters out of her custody because she had forbidden the youngest one to join the German Girls' Federation—the girls' section of the Hitler Youth. As a result of her experience with her two elder children, she considered the Federation likely to be detrimental to her youngest daughter's character. The instigator of the proceedings was the woman's former

husband, who held a high position in the Party. The Court based its finding on the theory that a mother who refused to allow her children to join the Hitler Youth showed that her disposition was out of harmony with the " people's life," and was therefore incapable of bringing up her children " in the spirit of the Führer." In face of this no other argument was pertinent.

(*g*) *The Three Forces in the Nazification of the People :*

During the Weimar Republic the National Socialist Party was already a State within the State, with as many " Ministries " as the Government itself (" Foreign Office," " Ministry of Justice," " Ministry of Defence," etc.). The object was to build up an organisation that should be capable of taking over and running the machinery of government as soon as the Party obtained power.

This object was, however, not achieved. In the first place, what had been discovered before was discovered again, *viz.* that no government can be carried on without a properly trained Civil Service, and, moreover, that the less this is capable of co-ordinating the relations between government and governed in such a way that the people can live together in mutual consideration and social intercourse—that they can, in effect, govern themselves—the more the ranks of the bureaucracy will be swollen. In the second place, there were not enough members of the Party with the brains and character to step into the positions —note, for instance, the appointments, even up to the present day, in the armed forces and the foreign service, and other important departments and positions such as those concerned with the national economy, and it will be found that the Party has again and again been forced to rely on trained officials of the old régime, even though these latter may have been " converted " to the principles of the new.

Thus the old machinery of government (Armed Forces and Civil Service) has maintained its existence alongside the Party. Relations between them are not clearly defined,

because the People are above the State.[1] The Party asserts that it represents the quintessence of the best "racial forces" of the people, or, in other words, that it is the "people carried to the highest power." Therefore it is acknowledged to be the "bearer of the German State Idea,"[2][3] and a power superior to the State.[4] It is the only party in Germany,[5] and is "indissolubly bound up within the State."[2] The machinery of government, however, cannot work properly if another authority is continually interfering in it. Moreover those Officers and Civil Servants who are not "total" Nazis make it their endeavour to maintain traditional features. Therefore there was no alternative but to restrict the influence of the Party over the machinery of government, without, however, thereby encroaching on the position that in principle the Party occupies. It is not subject to supervision by the State.[6] The tension thus created between State and Party gives rise to interesting reactions between the Party on the one hand and the Armed Forces and the Civil Service on the other, to which I shall refer later. These are reconciled in the supreme "leadership": Hitler is Führer and Chancellor—head both of the Party and of the State. Moreover most of the highest State positions are held by the same men who hold the corresponding Party position.

The supremacy of the Party must not be undermined, principally because it is the guarantor that, under the leadership of Hitler and by the use of his unlimited power, the movement will carry into practice Nazi theories.[7]

[1] See p. 126.

[2] Law to ensure the unity of Party and State of 1st February 1933 and amending law of 3rd July 1934.

[3] Preamble to the German Communal Regulations of 30th January 1935 and to the German Civil Service Law of 26th January 1937.

[4] Oberregierungsrat Dr. Wilhelm Albrecht, *Neues Staatsrecht* (*New Public Law*), 1935, p. 16.

[5] Law forbidding formation of new parties of 14th July 1933.

[6] Reich Minister Frick, in Frank's *Nazi Handbuch für Recht und Gesetzgebung* (*Nazi Handbook of Law and Legislature*), pp. 347 and 391.

[7] Carl Schmitt, "*Nationalsozialismus und Rechtsstaat*" (National Socialism and Constitutional State), in *Law Weekly*, 1934, p. 716.

To this end it has created a number of "Collective Associations," which have absorbed the former autonomous professional organisations and made them subject to the Führer principle. In every trade or profession there is a *Stand* ("Estate"),[1] or a *Front*, to which all members must belong. In this the Nazis have adapted to their own use a medley of Russian and Italian models.

These new Collective Associations are either independent public corporations under the supervision of the State (*e.g.* the "Reich Estate of Nutrition"), or attached to the Party (*e.g.* the Nazi Teachers' Federation). In the first, the influence of the Party is maintained by the appointment of its members to leading positions, which are under the authority of the appropriate Party offices. I shall return later to these matters. Here I would point out that politics have been forced upon professional life; and not only this, but the whole social and private life of the country, which under the Weimar Republic was left to the care of society and the individual, has, by the appropriate creation and extension of these Associations, been delivered up, body and soul, to politics. That which in the Germany of to-day passes for "society," "the man in the street," the "proletariat," or the "bourgeoisie," is a compulsory combination of people, led or controlled by the Nazis. This has taken the place of the former "free society," and also "represents" the mute opponents of the régime. The compulsion exerted in these hitherto free departments of life, which is applied even to family affairs, is stronger, and more effective in maintaining the internal stability of the new Reich than any other form of State power. Internally, it represents the most powerful of the forces—the other two being the State and the Party—that compel the individual to act as a Nazi in the everyday round of life. And that which is subject to this compulsion is summarised by Nazi legal writers under the conception of "the People,"[2] from which results the triad "Party, State, and People."

[1] See p. 81.

[2] Carl Schmitt in *German Justice*, periodical, 1933, No. 42A.

This triunity is given external expression by the mania for providing each member of the community with a badge, or dressing him up in a uniform. Uniforms are worn, with appropriate emblems of rank, by all leaders. Latterly they have also been brought into use for purely civil occupations, such as the Foreign Service, press reporters, etc. In addition, there are the uniforms of the Black Guards (Hitler's bodyguard), the Storm Troopers, NSKK (Nazi Motor Corps), etc.

A person who tries to resist any one of these three forces will fall a victim to the Gestapo and its concentration camps, or to the new criminal laws. But this negative safeguard is not sufficient for the " People's Führer-State," and it extends its total power positively by devoting this triad of " Party, State, and People," to the " People's Self-defence."

(*h*) *The People's Self-Defence :*

The principle of French law, whereby any crime is held to be excused provided it is committed from patriotic motives, in defence of the State in an emergency, had not formerly been admitted by the German legal system.[1] But that system admitted the principles of self-defence (*Notwehr*) and emergency (*Notstand*), in favour both of the individual and of the State.[2] [3] It did not overlook the fact that it was for the State to set in motion the forces necessary to meet an emergency. But the State may be prevented, on grounds of external politics, from taking measures desirable in themselves, and may therefore have an interest in allowing individual members of the section of the people concerned to defend themselves, even if in appearance they thereby offend against German laws.[3] The Supreme Court, following this argument to its logical conclusion, set up the principle of an " emergency superior to the law "

[1] Decisions of the Supreme Court of Justice (*Reichsgericht*) in criminal cases, vol. 63, p. 224.

[2] *Ibid.* vol. 62, p. 46 ; vol. 63, p. 220.

[3] *Law Weekly*, 1932, p. 2812.

in justification of an action that in itself would appear to be contrary to the law, and decided that the same principle applied to a "national emergency."

The essence of an emergency "superior to the law" is that it must *only* be possible for a person to protect a legal right, or carry out a duty, by destroying at the same time another legal right or not carrying out another duty. In this conflict between one right and another, and between one duty and another, the less important must give way to the more important. Thus it becomes necessary to weigh the respective importance of such rights and duties.[1] In this way the Supreme Court increased the power of discretion of the doctor in cases of abortion,[1] which under the existing law was too limited. It was not long before the Nazis, and their predecessors, the "vehmic murderers," began to plead these principles in their defence when they were charged with murder committed during political disturbances. The victims were mostly young men who, for the sake of a living, had joined the labour corps of the "black Reichswehr," and who were suddenly condemned to death without trial, and without even their knowledge, by the "*Fehmegericht*,"[2] on the grounds that they were "spies of the Entente." Their execution was as secret as their condemnation. They were shot or stabbed from behind, or a quarrel was forced upon them during which they were "accidentally" killed. Their bodies were either buried in a wood or placed in sacks, which were weighted with stones and thrown into a pond, where they were sometimes found. The accusations of espionage were deliberate falsehoods. Actually the unfortunate victims were inconvenient to the "Vehmic" organisations only because they had refused to join them, or had already been refused admission to them either on account of their former life, or because they were thought likely to betray the existence of the organisations to the authorities.

[1] Decisions of the Supreme Court of Justice (*Reichsgericht*) in criminal cases, vol. 61, p. 242; vol. 62, p. 137.

[2] Forbidden revival of a secret tribunal of medieval times.

The murderers pleaded in defence that they genuinely believed that they were dealing with unpatriotic Germans who were assisting the enemy ; and that they had acted in defence of the State in an " emergency superior to the law."

The Court avoided deciding in principle the question whether in such circumstances it was permissible to kill. It countered the plea of the defence by pointing out that the fact that murder was not the only means available for putting an end to the alleged unpatriotic actions of the " spies " was alone enough to convict them. For the same reason they could not plead mistake of fact as to the murdered man's being a spy.

This judgment of the Supreme Court did not go far enough for the Nazis. In their view the welfare of the people justifies annihilation of the " enemy " in any way whatever, whether inside or outside the frontiers of the Fatherland ; on these grounds, too, the " legal " glorification of the murderers of Erzberger, Rathenau and Dollfuss is " justified." And the law concerning the responsibility of members of the former Austrian Federal and Provincial Governments and their assistants [1] arises from the same cause. Under this law a Court, specially convened in Vienna by Hitler, decides on the ground of an indictment brought in the name of the German people by the Reich Commissioner for the Reunion of Austria with Germany, whether the accused have committed a breach of the law or an action hostile to the people. This decision is binding for all Courts and Government officials, and empowers the Minister of the Interior to deprive the convicted persons of their provisional right of citizenship and of their nationality, and to expropriate their fortunes by way of reparation. The judges who condemned Planetta, the murderer of Dollfuss, and his accomplices, are, according to competent Party circles, to be regarded as " assistants " within the meaning of this law !

Ever since the Nazis came into power they have refused,

[1] Of 17th August 1938.

on the grounds that their ideology is for ever bound up with the German people, to admit analogy [1] so far as it provides grounds for the *prevention* of injustice. The Nazis do not expect the Supreme Court to formulate its judgments on the same principles as those on which it acted in a former "epoch," [1] and have, for this reason among others, agreed that it shall no longer be bound by those given before 1st September 1935.[2] What they demanded for themselves before they seized power is not to be allowed to apply against them now. Supreme command in the defence of the State in case of emergency is vested in the Führer, and it is left solely to his discretion whether or not to acknowledge actions performed without his orders on behalf of the people and the State by Party officials or third persons.[1] The will of the Führer must not be restricted by the necessity of weighing the relative importance of various rights and duties.[3]

Let nobody suppose, therefore, that the pogroms that raged throughout Germany for days on end in November 1938 took place without the knowledge of the Führer. Otherwise would they not have been stopped? So far from that being the case, the mob was allowed to commit arson, burglaries and robberies, and assault and battery, and to insult and imprison its victims. Sick persons were ejected from the hospitals, or their doctors prevented from carrying out their work; bakers and dairymen were forbidden to supply Jews. The police, who were in the plot, stood by without lifting a finger. A few individual members of the Reichswehr rendered some assistance on their own initiative, but the Reichswehr as a whole would not intervene because it is the armed force of the nation as a whole and not a political body. Yet Göring, who as

[1] Prof. Dr. Klee, Berlin, "*Das kommende deutsche Strafrecht*," (The German Criminal Law of the Future), General Part, 1935, 2nd edition (*Report of the Official Commission*,) pp. 74, 86, 96.

Freisler, Secretary of State, in *German Justice*, 1935, p. 856, and in *Bulletin of the Nazi Lawyer's Association*, 1935, p. 21, and see p. 258.

[2] Article 2 of the law of 28th June 1935.

[3] See p. 157.

Commissioner for the Four Years Plan plays a leading part in action against the Jews, is its Field-Marshal, and Head of the Air Force. And the Reichswehr, into whose keeping the traditions of the old Army and Navy were given, has now agreed that Jews who, having served as officers in the war, were given the right to wear the former or present uniforms of the German or Austrian Armed Forces, should be deprived of this right.[1] They must not wear their uniforms to ensure protection against attack ; the dress of honour must not be exposed to danger. The State gives the Party and the " People " a clear way indeed ! [2]

If a debtor, in spite of the exercise by his creditor of patience and consideration, refuses to pay his debt, the latter may not give vent to his annoyance by smashing the debtor's windows, and then claim to set off the damage against the amount of his debt. This follows from the old legal principle that a person who is liable for damage done of malice prepense cannot set off the amount against a counter-claim.[3]

This principle has not only been abrogated ; the contrary has been established by the exercise of brute force. The Jewish owners of businesses and premises who suffered damage in the recent pogroms must not only immediately make good that damage—officially assessed at 170 million marks—at their own cost, but also submit to the confiscation by the Reich of their insurance claims, which are credited against the " contribution " of a milliard marks.[4] Thousands of Jews have been sent to concentration camps as " hostages " for payment of the sums demanded and to forestall further attacks by " world-Jewry."

Are not these the same methods that were employed in the case of Thaelmann, and later, for example, in connection with the establishment of a protectorate over

[1] Decree of Hitler of 16th November 1938.

[2] A reference to the " Horst-Wessel Song."

[3] Paragraph 393 of the German Civil Code.

[4] Decree concerning restoration of damage to Jewish premises of 12th November 1938, and see p. 148.

Czecho-Slovakia? As in those cases the burning of the Reichstag and the prevention of a world revolution, the Czech conspiracy and the necessity of protecting Germans, served as a pretext for their own actions and for attacks on people who are obnoxious to them, so here it is asserted that the German Jews are responsible for the death of vom Rath, the Secretary at the Paris Embassy. This responsibility could not be proved even in a Nazi Court of Law; and so hostages are chosen and allowed to suffer the fate of Thaelmann.

The pogroms would have happened anyhow, whether or no Grynzspan, the Polish Jew, had committed his ill-fated deed; this came to the Nazis as a gift from heaven, but even without it they would, as in April 1933, have made Jewish "atrocity stories" the pretext for letting loose the pogroms. Proof of this is provided by the dates of the measures for the identification of Jews and their businesses,[1] and of the orders for the removal of fire-extinguishers from premises occupied by Jews and for the search for fire-arms.

To-day it is the Jews that are attacked, to-morrow or the next day it will be the turn of the Catholics, the Marxists, the reactionaries; and so it goes on, with events of greater and less importance alternating, but with the tension always screwed up to the highest pitch. Even those who have not succumbed to it dare offer no resistance.

This state of affairs proves that National Socialism is not supported by the cultural *élite* of the country or the majority of the population. It can only maintain itself in power with the help of that mass-propaganda that is so entirely typical of it, which never for a moment leaves the people in peace, and whose essential characteristic is the commission of the most appalling outrages on humanity. That is the reason why all attempts to secure at least some mitigation of the methods employed have been unsuccessful.

Had they had the opportunity of sitting down and thinking things over quietly, all true Germans would have been filled with shame at the brutal domination by seventy

[1] See *n.* 1, p. 148.

millions of seven million Austrians, thirteen million inhabitants of Czecho-Slovakia, or 600,000 Jews. But any such sense of shame is stifled at birth by the creation of mass-psychosis. The passions of the mob are worked upon to create a demand for the reversal of the "injustice of Versailles" and the punishment of the alleged wrong-doers; but knowledge that the chosen path is again leading them astray must never be allowed to take root in the minds of the people. So, once again, we see might misused for the crushing of right. Fellow-countrymen are exposed to a worse fate than their former enemies ever laid upon them by the Peace Treaty.

This propaganda is Hitler's own particular ground, and Göbbels is merely his agent. We know now that "lies" and "shameless effrontery" are of its essence.[1] Its authors well understand that the emotions can be blunted by over-stimulation, and they appeal not to the virtues but to the weaknesses of mankind. Outrages openly committed excite the passions. The people must be dominated by the idea that the highest interests are at stake. Tension is increased by the spreading of the wildest rumours; but the dissemination of news, and particularly of news from abroad, is so strictly controlled that the truth can never be ascertained. In this medley of tension, confusion, fear and insecurity, the fainter-hearted are drawn into the vortex and take part in the outrages: even in the hearts and minds of those who in normal circumstances would never dream of committing such acts, the will to resist sometimes fails. The danger that prickings of conscience may later be felt is met by mass-meetings held week after week in towns and villages, and by lectures delivered to all Party organisations and professional associations, at which these outrages are justified and the minds of the people prepared for further developments of the Party programme.

[1] See p. 125.

B. The Führer and Chancellor

(*a*) *The Government of the Reich* is no longer carried on by a Cabinet consisting of the Ministers under the chairmanship of the Chancellor, who pass resolutions by a majority of votes.[1] As a result of the change in the system of government, even the Finance Minister no longer has the right to oppose a resolution upon important financial matters. Proclamation in the Official Gazette of a law passed by the Government simply means that it has been decreed, in accordance with the Führer principle, by Hitler in his capacity as Führer and Chancellor. It is left entirely to his discretion to what extent he shall avail himself of the advice of his Ministers, whom he himself appoints and whom he can at any time dismiss.[2] The title "Chancellor," in the holder of which are vested the functions of the President of the Reich,[3] relates to the affairs of the State; and that of "Führer" to those of the Party and the people. The fact that the laws that are promulgated bear the countersignature of the respective Ministers implies that the latter are responsible, not to the Reichstag for Hitler's decisions, but to him for their execution. Most laws expressly authorise the Minister concerned to issue the necessary administrative decrees thereunder; and to that extent Hitler's right to decree laws at his own absolute discretion is delegated. Nevertheless, in order that Party influence shall be assured, the Minister must act in conjunction with the Führer's deputy, Hess.[4] For this purpose the latter has been appointed Minister without Portfolio.[5]

[1] Standing Orders of 3rd May 1924 to 14th April 1926.

[2] Law concerning the Ministers of the Reich of 16th October 1934; and German Civil Service Law of 26th January 1937.

[3] Law as to the Head of the German State of 1st August 1934 and Decree of 2nd August 1934.

[4] Führer's Decrees of 25th July 1934 and 6th April 1935, in Frank-Haidn-Fischer *Das Recht der NSDAP* (The Law of the Nazi Party).

[5] Law for assuring the Unity of Party and State of 1st December 1933 to 3rd July 1934.

One result of this method of legislation is that the laws suffer badly from lack of clear co-ordination. Under each law a considerable number of decrees are issued, many of which are soon either amended or repealed ; and this applies even to the original law.

The change in the role of the Government is due merely to passive acceptance of a practice gradually established, and is to be seen in the fact that many laws and decrees are signed by Hitler alone.[1] It is further to be seen in the creation of a secret Cabinet Council,[2] whose duty is " to advise Hitler in matters of foreign policy." It is significant that the Minister of Propaganda has a seat on this Council, but not the Minister of Finance.

There is no independent authority with the right to grant moneys or to control State or Party expenditure. Under the Enabling Law[3] the Government was already provisionally freed from the restrictions of the Weimar Constitution as regards the raising of money and its appropriation and expenditure. The following law[4] is a good example of the manner in which this freedom has been made use of :

> " The Minister of Finance is hereby authorised to raise, by means of credit, funds, the amount of which shall be determined by the Führer and Chancellor, on the motion of the Minister of Finance."

The Government vouchsafes no detailed information on financial matters. In a speech[5] lasting more than two hours, Hitler expatiated in full on the subject of the increase of production, and touched on the revenue side of the matter in broad outline. The expenditure side he ignored entirely.

[1] *E.g.* the Decree referred to in *n.* 3, p. 163, or those concerning the exercise of the rights of the Reich Statthalter (Governor) of Prussia, of 30th January 1935, and the convocation of a General Synod to set up a constitution for the German Evangelical Church of 15th February 1937.

[2] Law of 10th February 1937 and Decree of 4th March 1937.

[3] Of 24th March 1933.

[4] For the granting of credit facilities of 19th February 1935.

[5] In February 1938 before the Reichstag.

Even the objects of the innumerable street collections may be varied without permission of the contributors.[1]

After his appointment as Chancellor, Hitler took the oath before President Hindenburg to observe the Weimar Constitution. An oath as head of the State was described as "superseded by events."

In matters of foreign policy he acts in his capacity as "Chancellor of the German Reich" only: in internal affairs always as Führer and Chancellor. From this it follows that all laws are binding on the Party also. Party and State meet in the "Will of the Führer,"[2] and it is he who decides differences of opinion between them.

Since National Socialism applies to all people of "German blood,"[3] it follows that the authority of the Führer extends beyond the frontiers of the Reich. Hitler declared in a speech[4] that "the frontiers of the land no longer coincide with the frontiers of thought." And Hans Frank, a Reich Minister and the Party Leader of the German legal profession, explained a short time ago that the National Socialists regard the racial laws as the most revolutionary element in their struggle, and would like to see these laws taken as a model by the rest of the world.[5]

In the sphere of the "State,"[6] however, greater discretion is, for reasons of foreign policy, observed in this connection. Nevertheless, tentative efforts have not been wanting, as in the Nuremberg Laws, in which the term "Jew" covers persons of all nationalities. In the Administrative Decrees, however, it was confined to German or Stateless Jews. Other legal measures against the Jews have either been subject to the same limitation,[7] or else have

[1] Paragraph 4 of the Decree of the Nazi Party concerning collections of 4th July 1935.

[2] Graf von der Goltz in *op. cit.* (see *n.* 1, p. 51), p. 13.

[3] See pp. 126, 186.

[4] On 21st May 1935.

[5] *Law Weekly*, 1937, p. 1871.

[6] *I.e.* Germany as a geographical entity, as opposed to the Reich, which, in the Nazi conception, includes all Germans or people of German blood, wherever they may live.

[7] *E.g.* Police Regulation of 28th November 1938, see *n.* 5, p. 148.

authorised the competent Reich Minister to make exceptions in the case of foreign Jews.[1]

A typical example of the Nazis' efforts to make their laws current beyond the frontiers of the Reich is to be seen in the action of the Public Prosecutor (*Oberreichsanwalt*), *i.e.* one of the highest legal authorities in the Reich, in submitting to the Grand Senate of the Supreme Court,[2] which deals with criminal cases, the question, among others, whether the provision [3] that German criminal laws apply " to all crimes committed within the territory of the German Reich " is to be understood only in the " geographical," or also in the " racial " sense. The Supreme Court left this question to the legislature to answer.

Hitler's two-fold capacity, as Führer and as Chancellor, has made it possible for the Nazis to interfere in the internal affairs of other countries, particularly in districts necessary to the *Volk ohne Raum*—the people without living space, who however are "united in the Greater German People's Reich." [4]

Accordingly the position of " Reich Minister " is of wider application than that of " Minister of State." Only Dr. Meissner, Chief of the Presidential Chancellery, bears the latter title.[5]

Those Ministers who were not already members of the Party, or who joined it " voluntarily," acquired membership through the bestowal upon them of the " Golden Pin of the Party," which in the ordinary way only old members receive. It is said that the Minister of Transport, Freiherr von Eltz-Rübenach, was bold enough to refuse the Pin owing to the attitude of the Party in Church matters. He is no longer in office. To emphasise the outward show of complete unity, Ministers were appointed honorary members of the Black Guards or the Storm Troopers—as

[1] *E.g.* Decree against the carrying of arms by Jews of 11th November 1938.

[2] *Juristische Wochenschrift*, 1938, pp. 851, 1105.

[3] Paragraph 3 of the Criminal Code.

[4] Points 1 to 3 of the Party Programme.

[5] Decree of 1st December 1937.

for example Freiherr von Neurath, the former Foreign Minister and now Protector of Bohemia-Moravia.

The Law for the Reconstruction of the Reich [1] gave the Government unlimited legislative powers, which, as a precautionary measure, were confirmed up to 10th May 1934 by the continuance of the Enabling Law.[2] In addition, the Government has from time to time used the Reichstag to obtain " unanimous " votes in favour of such laws as were considered specially important for the development of the " People's Führer-State," such as the Nuremberg Laws.

Substantially there is no longer any distinction between the legislature and the executive.

(*b*) *The Reich Statthalters:*

The declaration of Germany as a unified State resulted in the transference of the sovereign rights of each individual State to the Reich.[1] The Reichsrat—the Federal Council—was abolished,[3] and the various States are now administered in accordance with the Führer principle, as provinces of the Reich by Statthalters (Governors) appointed and dismissed by Hitler.[4] The Statthalter of Prussia is the Chancellor of the Reich *i.e.* Hitler himself, but he has delegated his authority in this respect to Göring as Prussian Premier.[5] The Statthalters, who are under the supervision of the Minister of the Interior, have limited powers of legislation exercised with the concurrence of the central Government. The parliaments of the old federated States no longer exist. The Statthalters, and the Governors of the Prussian provinces, are all old members of the Party, most of whom, in addition to their State positions, hold that of Regional Leader (*Gauleiter*).

[1] Of 30th January 1934.
[2] Laws of 30th January 1937 and 30th January 1939.
[3] Law of 14th February 1934.
[4] Law concerning Reich Statthalters of 30th January 1935.
[5] Decree of 30th January 1935.

(*c*) *The Reichstag* consists entirely of the National Socialist Party; no other party is permitted.[1] Any attempt to keep alive old political parties, or to form new ones, is punishable with long terms of imprisonment. The Reichstag, of course, is not a freely elected Parliament—a fact the clearest evidence of which is probably the law [2] whereby Hitler simply appointed, from the electors, eight members to represent the Saar District in the Reichstag. The members of the Reichstag are first and foremost members of the Party whose duty is blind obedience to the Führer, and not the execution of their "constituents'" wishes. Nor is this state of affairs affected by the twenty or twenty-five members who, not being Party members, are regarded as "guests" of the Party.[3] Among these are von Papen and Hugenberg, who were thus remunerated for their voluntary and involuntary services as Hitler's "stirrup-holders." Another reason for their admission is that even the Nazi jurists were disturbed by the criticism that this metamorphosis of the Reichstag violated the Enabling Law,[4] which prohibits any measures aimed at the "actual organisation of the Reichstag." They attempt to justify themselves by the statement that not even far-reaching constitutional changes in the franchise, or the suppression of certain privileges of the Reichstag, affect its organisation so long as it remains a "body representing the people," and a "legislative assembly." [5] The "guests" were included in the electoral list of the Party to give it a slightly more impartial aspect. It is something of a misnomer to speak of a "legislative assembly" if its only function is to pass laws by order, and not to discuss, reject or amend them.

Hindenburg signed the order dissolving the Reichstag,[6]

[1] Law prohibiting the formation of new parties of 14th July 1933.

[2] Law concerning Representation of the Saar District of 30th January 1935.

[3] Albrecht (see *n.* 4, p. 154), *op. cit.* p. 44. [4] *N.* 3, p. 164.

[5] Carl Schmitt, *German Lawyers' Journal*, 1933, Col. 457, and Albrecht (see *n.* 4, p. 154), *op. cit.* p. 22.

[6] Of 14th October 1933.

although he well knew that a Nazi Party junta would take its place. Thereby he gave Hitler powerful assistance, which he had previously refused, towards the establishment of a party dictatorship.[1] Once Hitler had an obedient Reichstag behind him he could get all the laws passed that he needed to ensure the "legality" of his revolution.

It is perhaps to the failure of his "illegal" revolution—the abortive march on the Feldherrnhalle in Munich [2]—that we must look for the psychological grounds for his desperate desire to stick to the idea of the "legal" revolution. But this is a catch-word that is not without its dangers. Revolutions do not appeal to the order-loving German, who prefers to maintain the law of the land, or if it must be altered, to alter it by constitutional methods. Hitler bases himself on this preference; and he declares that he will keep certain laws or treaties, or he concludes a treaty or decrees a certain law for the purpose of "legalising" a situation the acceptance of which he has already enforced. When a situation arises that he does not like, he tests the strength of his opponent. If he decides that the latter is capable of putting up a fight, he tries to undermine his resistance; if he thinks the time ripe for a sudden attack, then he either accuses his opponent of breach of some law or treaty, or—an old device of his—complains that his words have been misinterpreted and proceeds to explain what they really meant. And before the innocent and trusting people are aware that anything is happening, the "great change" has taken place. Dissentients are either forcibly converted, or given over to the tender mercies of the "terror." That, in a nutshell, is Hitler's plan of action in all such cases.

The role of the Reichstag is one of masterly inactivity. It is a sounding-board for the orations of the Führer, which he makes use of as and when he pleases. Once or twice a year the members meet and act as an enthusiastic audience, for which service they are remunerated on a

[1] See p. 73. [2] 9th November 1923.

scale no lower than before. Some of them are also members of the Prussian State Council, which Göring has converted into an advisory body of the Prussian Ministry of State, and whose sole duty is to listen to his speeches. A Regional leader of about thirty-two, who while retaining that post is a member both of the Reichstag and of the Prussian State Council, told me that he received about Mk.1200 a month tax free from these two posts, of which about Mk. 700 are apportioned to the Reichstag. The significance of these charges on the national exchequer may be seen by comparing them with the earnings of a high official, such as a senior Civil Servant or a Judge, who at middle-age makes on an average not more than Mk. 700–800 a month, and that subject to tax. And the Party programme lays it down that unearned incomes are to be abolished ![1]

Thus the Reichstag—a " body representing the people " —has been turned into a charitable institution for the " old guard " ; and it is without surprise, therefore, that we read that the Nazi legal pundits, in the course of the development of their theories, have arrived at the opinion that the Reichstag as an institution can at any time be " legally " abolished by Government decree.[2]

(*d*) *The Referendum :*

Under the Weimar Constitution sections of the Reichstag or of its constituents could, in certain circumstances, refer a law to the electorate for its decision. This, naturally, is not compatible with the Führer principle, and so the law concerning referendums [3] was amended. The Government alone has the right to take a referendum. Its scope has been widened to enable the people to be consulted not only on laws, as hitherto, but also on political questions of general importance—a fact that is said to demonstrate the intimate bond between Government and people.

The reason for the overwhelming majorities obtained

[1] Point 11.

[2] Albrecht (see *n* 4, p. 154), *op. cit.* p. 45.

[3] Law of 14th July 1933.

by Hitler is that the Reichstag elections have been cunningly combined with referendums on questions of foreign policy that no patriotic German would dream of voting against. These "election campaigns without an opposition" give Hitler welcome opportunities for carrying on his propaganda by means of mass-meetings. On 12th November 1933 the questions referred were Germany's retirement from the Disarmament Conference and her resignation from the League of Nations; on 29th March 1936 it was the military reoccupation of the Rhineland; and on 10th April 1938 the Anschluss with Austria. Who in the circumstances would have had the courage to vote in favour of the question relating to foreign policy and against the Reichstag list? I remember once that, after stepping out of the polling-booth, but before leaving the voting station, I had to buy a badge showing that I had given an affirmative vote on both questions. On 10th April 1938, indeed, the two questions were prudently framed as one: "Do you approve the reunion effected on 13th March 1938 between Austria and the German Reich *and* do you vote for the list of our Führer, Adolf Hitler?" [1] The Bishop of Rottenburg, Dr. Johannes Sproll, had the courage to abstain from voting, and to explain that he was in favour of the Anschluss, but that he was not prepared at the same time to vote for a list of candidates for the Reichstag that included the names of a number of people antagonistic to the Church. For months the Bishop was shamefully attacked and abused, and he was finally driven from his diocese by the Black Guards.

The new law does not provide for the possibility of a referendum unfavourable to the Government. The official explanation is that it is an improved derivative of old germanic legal forms and customs, under which effect was given to the will of the people. The Nazi jurists reply that it is therefore to be left to the Führer and Chancellor to decide whether or not he shall take the steps he wishes to take,[2] for it is in his will alone that the will of the people

[1] Decrees of 18th March and 24th March 1938.

[2] Merk (see p. 125), *op. cit.* p. 645.

is correctly expressed and effect is given to it in spite of the self-willed and misguided electorate.[1] [2]

This explanation probably also accounts for the fact that, although the law speaks of "intended" measures, which, therefore, one would not expect to see carried out before the referendum, the voter has in every case up to the present been faced with a *fait accompli*.

(*e*) *Party and Party Jurisdiction :*

Before it attained its commanding position in the State,[3] the National Socialist Party was a "civil-law" association. Subsequently it was declared to be a "public-law" corporation.[4] This declaration was admittedly another result [5] of the Nazi jurists' inability as yet to formulate clearly the new conception of the "community."[6] According to them, the only attribute the Party has in common with other public-law corporations is that it has been promoted from the domain of private law to that of public law.[7] Apart from this none of the characteristic features of a public-law corporation would appear to apply to it.[6]

The Party's independence of the State is evidenced by the fact that none of its members, or of those of its affiliated bodies, may, without the sanction of the Führer's deputy, be examined as witnesses or experts before the ordinary courts upon matters specified by the Party as secret or confidential. Members occupying certain posts are in

[1] Tigges (see *n.* 2, p. 88), *op. cit.* p. 179.

[2] See p. 131. [3] See pp. 153–4.

[4] Law to ensure the unity of Party and State of 1st December 1933. A "public-law" corporation (*öffentlich-rechtliche Körperschaft*) is a legal entity ("corporation aggregate") which, for public purposes, is vested with special rights, *e.g.* State, municipality, Church, the Reichsbank, etc. "Public Law" comprises laws regulating the relations between the individual and corporations, etc., to which he is subordinate (the State, etc.), and those between the corporations themselves, *i.e.* Constitutional law, criminal law, taxation, etc. "Private Law" comprises laws regulating the relations between the individuals themselves, *i.e.* civil law, commercial law, etc.

[5] See p. 130. [6] Höhn (see *n.* 2, p. 127), *op. cit.*

[7] Frank-Haidn-Fischer (see *n.* 4, p. 163), *op. cit.* p. 57, *n.* 6, p. 58. Decision of the Supreme Court of 17th June 1935 in *Law Weekly*, 1935, p. 2202.

any case forbidden to give evidence without such permission, which is only given provided the welfare of the State and the Party is not jeopardised.[1]

On the other hand the Party courts are authorised to take evidence on oath from witnesses and experts, provided the examining magistrate is a qualified judge. This oath is equivalent to an oath taken before an ordinary court.[2]

The ordinary courts have to render legal assistance to the Party courts. They are not authorised to revise the latter's decisions. On the other hand the tendency is for the Party courts to refuse to accept the judgments of the ordinary courts as legally valid. Under the former Prussian disciplinary laws, which had been in force for nearly a hundred years, and which had been adopted throughout the Empire, decisions on points of fact were, in the case of an acquittal, binding on the professional "Courts of Honour." These latter examined the facts of the case as determined by the court for the sole purpose of ascertaining whether, even if they did not provide evidence of criminal acts, they did point to professional misbehaviour. The new regulations for the medical profession,[3] however, authorise the professional court, for instance, to revise the ordinary court's decision on points of fact if it unanimously resolves to do so.

The NSDAP—the National Socialist Party—consists of the Party itself as the nucleus, together with its affiliated bodies and associated federations. The last two are sometimes referred to together as "subsidiary organisations."

The affiliated bodies are not legal entities and possess no property independently, but form, together with the Party, a unit in which the administration of the property is centralised.[4] Such bodies are the Storm Troopers, Black Guards, Nazi Motor Corps, Hitler Youth, Nazi German Students' Federation, and Nazi Women's Organisation.

[1] Law of 1st December 1936 and administrative directions.

[2] Law of 30th September 1936.

[3] Paragraph 56 of the *Reichsärzteordnung* of 13th December 1935.

[4] Paragraph 5 of Administrative Decree of 29th March 1935 to Law of 1st December 1933.

The associated federations may be legal entities, but are subject to financial supervision by the Party Treasurer.[1] The following are associated federations :

Nazi German Medical Federation.
Nazi German Jurists' Federation.
Nazi *Rechtswahrer* [2] Federation.
Nazi Teachers' Federation.
Nazi People's Welfare Society.
Nazi Society for Care of War Victims.
Reich Federation of German Officials.
Nazi German Technical Federation.
German Labour Front (including the Nazi Fellowship *Kraft durch Freude*—" Strength through Joy ").

Membership of an affiliated body or an associated federation is possible without membership of the Party, and vice versa.

The whole of the youth of Germany is organised in the " Hitler Youth." By the appointment of the Youth Leader of the Party as " Reich Youth Leader " (one of the chief public authorities of the Reich),[3] by general revision of school curricula, and by laying down new lines for the teaching of history,[4] the youth of the country is educated in Nazi principles and induced, on the attainment of the appropriate age, to join the Storm Troopers or the Black Guards, and also those affiliated bodies or associated federations that exist by the side of reorganised professional associations and provide them with the leading persons of each profession, such as the Nazi German Medical Federation or the Nazi German Students' Federation, which exist beside the Reich Chamber of Medicine and the German Students' Association respectively.

The scope of the Führer principle is unrestricted—a fact that results in strange forms of control. Thus all

[1] Paragraph 5 of Administrative Decree of 29th March 1935 to Law of 1st December 1933.

[2] A title coined by the Nazis : lit. " those who maintain or preserve the law." The Federation includes among others both judges and jailers.

[3] Law concerning the Hitler Youth of 1st December 1936.

[4] General Order of the Ministry of 25th July 1933.

Party members must notify to their superior officers within three days any change in their family status, and even a temporary change of residence, at the same time personally producing their membership books. Failure to do so is heavily punished by the Party Courts as a serious offence against the Party interests.[1]

Members when wearing uniform often carry a dagger, the use of which is " desirable " in the interests of discipline.

Röhm, as Chief of Staff of the Storm Troopers, which body when he was alive included the Black Guards, introduced the " Dagger of Honour," which he bestowed on trusted members of these organisations. Dr. Frank, leader of the German legal profession, was one of the recipients of these daggers, on which was engraved in Röhm's handwriting : " In hearty comradeship, Ernst Röhm." [2] After Röhm's death these daggers continued to be carried, but with the inscriptions erased. The dagger hangs at the left side and must be held in such a way that the hilt can always be gripped by the left hand. The following case shows the danger incurred by failure to obey a man carrying one of these daggers : the leader of a Unit of the Storm Troopers, in the course of his duties, had ordered a subordinate to leave a café when the tattoo was sounded, accompanying his orders with abusive language. The man who had been thus insulted followed the leader out into the street and assaulted him. The leader drew his " dagger of honour " and stabbed the subordinate in the abdomen, with the result that the man died. The leader knew that he was stronger than the other, and that he would have had no difficulty in defending himself without using his dagger. But the Supreme Court of Appeal (*Reichsgericht*), in the interests of the authority that the leader represented, accepted his plea of self-defence. The Nazis welcomed this decision as a " pioneering extension of the idea of self-defence in emergency, and a sign that the National Socialist

[1] Second Resolution concerning the Decree for the execution of the Law for assuring the unity of Party and State of 29th April 1935.

[2] *German Law*, 1934, p. 43.

view that every member of the community should at all times and in all ways conduct himself in a manner befitting a soldier, had prevailed." [1]

Members of the Party, and of the Storm Troopers and Black Guards, are subject to special jurisdiction [2] by the Party; the Storm Troopers, or the Black Guards respectively, and those of the associated federations to jurisdiction by special professional courts. If in any case doubt arises, owing to membership of more than one of these organisations, as to which court is competent to try it, the decision depends on the nature of the offence. All the courts may function simultaneously or consecutively unless the result would be that expulsion from the Party (nucleus) would also mean expulsion from the subsidiary organisation. In addition to disciplinary punishments, which may take the form of expulsion, dismissal, reprimand, deprivation for not more than three years of the right to occupy a Party office, deprivation for not more than twelve months of the right to carry arms, and deprivation of the right to make public speeches,[3] certain superior officers have the power to order arrest and confinement.[2]

The decision of the Party court may be to declare itself incompetent, for " high Party reasons," [3] to deal with the matter. In such cases the offence against the Party, out of consideration for the perpetrator, or for the deed in relation to the Party, remains unpunished. The Führer can make a hero of him—or give orders that he shall be " rendered harmless," perhaps by leaving him alone with a loaded revolver and allowing him to choose an " honourable end."

The method of giving effect, in the administration of " Party justice," to the Führer principle, is interesting.

The Party court consists of three members, a President and two assistant Judges. First the assistant charged with the examination of the accused gives his judgment at a

[1] *German Justice*, periodical, 1935, p. 893.

[2] Law of 1st December 1933.

[3] Paragraph 26 of the Directions for the Party Courts of 17th February 1934, as amended.

secret conference, and then the other assistant does the same. The vote of the President overrules those of the two assistants.[1]

The Party Judges are responsible to the Führer alone, and not to any of the Deputy Leaders.[2] But in matters of procedure the Presidents of the higher Party courts have authority over the lower courts.[1 3]

Party judges can at any time be relieved of their posts on account of incompetence, or unsuitability on any other grounds.[4]

The Party, its subsidiary organisations, its leading members, and its uniforms and badges, are protected by special paragraphs of the penal code, in the same way as those of the State.[5]

To show that it is to be absorbed by the Party, the Reich bears, as the symbol of its sovereignty, the symbol of sovereignty of the Party, which consists [6 7] of the swastika surrounded by a wreath of oak-leaves, and above it an eagle with outspread wings. The eagle's head is turned to the right. It is difficult not to smile when looking at it, for in the days when it spread its protecting wings over the Party only, its gaze was directed to the left !

(f) The Party and the National Armed Forces :

In the juxtaposition of Party and State it was the Reichswehr that was most successful in keeping clear of Party influence. It is true that, as early as April 1934, its members began, with Hindenburg's permission, to wear the swastika, the symbol of sovereignty of the National Socialist Party,

[1] Paragraph 25 of the Directions.

[2] Buch in *German Justice*, 1934, p. 650.

[3] Paragraph 6 of the Directions.

[4] *E.g.* Paragraph 6 of the Decree regarding Courts of Honour of the Nazi *Rechtswahrer* Federation, and Tigges (see *n.* 2, p. 88), *op. cit.* p. 164, *n.* 64.

[5] Law concerning malicious and mischievous attitude towards and action against State and Party, etc. (*Heimtückegesetz*) of 20th December 1934 and *e.g.* paragraph 134A of the Reich Criminal Code.

[6] Decree of 5th November 1935.

[7] Decree of 7th March 1936.

on their caps ; but they resisted with all their might the scheme for incorporating the whole of the Storm Troopers and Black Guards, together with their "officers," in the Reichswehr under Röhm as Reich Minister of War. That was probably also the reason why, under von Blomberg, they acquiesced in the action taken against Röhm and the Storm Troopers, and even in the unexpected attacks on other people, some of whom belonged to their own ranks.[1] From those people, who glorified political murders and other crimes, such attacks were, of course, only to be expected. Without the support of the army Hitler would never have been able, in spite of all mass-psychosis, to bring about between 1st July and 2nd August 1934, the revulsion of public feeling that enabled him—the Party chief who had destroyed those who had done most to help him to power—to become President Hindenburg's successor. He showed his gratitude to the Reichswehr by at first carrying out his promise that it should be the only armed force in the country. It is true that the Black Guards, as the executive branch of the police, carried arms, and were permitted to use them in accordance with the army regulations ; [2] but they were allowed no heavy artillery, and numerically they were far inferior to the Reichswehr.

The armed forces jealously guard their special position. The Gestapo, under Himmler, tried indeed to extend their sphere of control to cover them, but they have their own intelligence service, and refused to submit to interference from the Gestapo.

The connecting link between the Party and the armed forces is Hitler himself. As Führer and Chancellor he is supreme Commander of the whole of the armed forces, which have taken the oath of fidelity to him. His supremacy was in no wise affected by the events at the beginning of 1938 or the edict concerning the leadership of the armed forces.[3] It was merely because the functions of the

[1] See pp. 201 *et seq.*
[2] Decrees of 17th January 1936 and 18th April 1937.
[3] Of 4th February 1938.

Minister of War had been transferred to a junior artillery General (now Colonel-General), Keitel, who had succeeded von Blomberg, and who could not hold a position of authority over the new Commander-in-Chief of the Army, Colonel-General von Brauchitsch, the head of the Air Force, Field-Marshal Göring, or the head of the Navy, General-Admiral (now Grand-Admiral) Raeder, that von Blomberg's former post as Commander-in-Chief of all the armed forces of the country (*i.e.* under Hitler and over the commanders of the individual branches of those forces) had to be converted into that of Chief of Staff (chief of the higher command of the armed forces). The posts occupied by the four officers referred to give them the rank of Minister of the Reich, who attend cabinet meetings [1] as directed by Hitler.

No officer, non-commissioned officer, or private may take part in politics. If any of them are members of the Party or its subsidiary organisations, their membership lapses for the period of their service,[2] as does their right to vote or to take part in plebiscites in the Reich. It is within the discretion of the Minister of War to place officials and civil employees of the armed forces under the same limitation.

Military jurisdiction has been restored.[3]

Party Leaders or Ministers of the Reich (*e.g.* Göbbels and Rosenberg) occasionally give lectures to officers for " enlightenment " purposes ; but it is said that the reaction to these lectures has not always been favourable, particularly owing to the Party's attitude to the Church.

Before the young men who are liable for the two-years compulsory military service are called up,[4] they must do six months labour service. This is under the direction of the Reich Labour Service Leader and under the supervision of the Minister of the Interior. Although this labour

[1] Edicts of 4th February and 25th February 1938.

[2] Paragraphs 21 and 26 of the Defence Law of 21st May 1935.

[3] Law for alteration of the regulation concerning Courts Martial of 9th October 1935.

[4] Edict of 24th August 1936.

service is not a function of the Party, its purpose is, amongst others, to educate the youth of the country in the spirit of National Socialism, and during this period they are permitted to belong to the Party.[1] So it is just during the period immediately preceding their entry into the armed forces, when they are taught to "present arms" with their spades, that they are thoroughly imbued with the ideas of the Third Reich.

The armed forces will probably not agree without a struggle to the violation of their exceptional position as regards the exclusion of politics—which in practice means that it is not the business of any member of the Party to interfere with the military organisation. The Party has no right to be consulted concerning the appointment of officers or civil employees of the armed forces. To what extent, if at all, political matters are discussed in them cannot, it is true, be determined definitely in a State in which politics have permeated every department of life and have become the most important thing in it. But there is little doubt that in private they may be discussed.

Experience will show those responsible for the training of the armed forces whether the introduction of military discipline into every department of life will or will not have an adverse influence on the quality of the human material. The old imperial forces owed their efficiency to the fact that every man was, during the period of his service, subjected to the same training and the same demands as the others. Apart from that, they had liberty of faith and conscience ; and it was just this antithesis of liberty and compulsion that made for efficiency.

It may be that in the attitude taken up by the Reichswehr the ideas of its new founder, the late Colonel-General von Seeckt, play a part, for he demanded the subordination of the soldier to the statesman,[2] and enunciated the principle that the duty of an army was to serve the State and not a

[1] Reich Labour Service Law of 26th June 1935.
[2] Von Seeckt, *Gedanken eines Soldaten* (*A Soldier's Thoughts*), 1929, p. 55.

political party.[1] He also opposed, and with good reason, the idea embodied by the sabre-rattling, war-mongering General.[2]

It is not the task of this book to discuss in detail the statement, so frequently made, that discipline in the army is unnecessarily strict. Up to the end of 1934 I was frequently appointed officially to act as counsel for the defence in military criminal cases, which were still tried before the Court of Appeal in Berlin. In these I received the impression that the attitude of the officers towards their men was always correct and often kindly and sympathetic.

Nor is it within the bounds of my subject to discuss the questions whether the nature and extent of Germany's re-armament is really in accord with ideas of modern strategy, which holds that the efficiency of an army does not necessarily depend on huge masses of troops; and whether it has been partly due to the promises that have been made to abolish unemployment. Nor can I enter into political considerations regarding the future attitude of the armed forces. One question is of crucial importance: whether, in accordance with the legal position as discussed, the organisation of the armed forces will in the end be capable of rescuing the finest part of the Prusso-German tradition from Nazi mass-psychosis. It must be remarked here, unfortunately, that it has failed both to keep alive comradeship with ex-service men who have on racial or political grounds been turned into "enemies," and to vindicate publicly and without reserve the honour of the Generals murdered in 1934. Was this failure really only an unwilling sacrifice to the new idols, or was it a sign of the political disintegration of a corps of officers the various elements of which are no longer held together by the person of a Kaiser as supreme War Lord?

There are a number of officers and soldiers who, while they preach the National Socialist word, have yet escaped censure for taking a forbidden part in politics. And Hitler has decorated several Generals with the Golden

[1] *Op. cit.* p. 116. [2] *Op. cit.* p. 12.

Badge of the Party, so that, in some cases against their will, they have become members of it.

Hitler's desire is to make of the Army, Navy, and Air Force, services devoted to him in a political as well as in a military sense. He has done much to bring this about by ordering every man between the ages of seventeen and forty-five who is liable for service to join the sports divisions of the Storm Troopers.[1] It is true that the ostensible reason for this order is the maintenance of physical efficiency, and that membership of the Storm Troopers, with the political training it entails, lapses during the period of service with one of the armed forces. The Storm Troopers' sports divisions, however, are not subordinate to them ; they are still under the independent command of their Chief of Staff, Lutze (Röhm's successor), who has also been instructed to carry through the new regulations in consultation with the military authorities.

Thus the way is paved for the militarisation of the Storm Troopers. But this Party corps does not correspond to the army of 1914, which, at least until the change of command early in February 1938, was taken as a model by the leaders of the Army, Navy, and Air Force. Together with these, the Storm Troopers and the Black Guards are now part of the armed forces of the nation. Moreover the strength of the Black Guards has been increased, and they have been provided with heavy artillery, trench mortars, and tanks. The Reich Officers' Federation has been disbanded, and its members have had to join the Nazi Combatants' Federation.

So the hour has come when officers—particularly those belonging to the old nobility—must consult their consciences. Hitler will not hesitate to seize their family estates and to abolish their titles, if they refuse to bow to his will. Will they keep unsullied the ideal of defence of the Fatherland, and not permit it to be supplanted by political chimeras, or will they sink to the level of mercenaries ?

[1] Edict of 21st January 1939.

(*g*) *The Party and the Civil Service :*

Relations between the Party and the State Civil Service are more intimate. Officials must as far as possible be members of the Party or its subsidiary organisations, particularly the Nazi People's Welfare Society. The Party was obliged to allow the State to retain many officials in its service who, though they were not National Socialists, nevertheless " endeavoured with all their power to remedy that state of affairs." [1] The Reich was able to further these endeavours very considerably by the numerous resolutions passed after 7th April 1933 for the " reconstruction of the professional Civil Service," under which, apart from measures relating to racial or political " unsuitability," *every official who is fit for service* can, for the simplification of the government or in the general interests of the service, be retired or moved to another post in his own or a similar sphere of action. This may mean reduction of rank, but in that case the official retains his former designation and salary. Thus the former Presidents of the Provincial Courts of Appeal in Frankfort and Cologne were moved to Berlin as Presidents of the Senates of the highest Prussian Court of Appeal. And a former President of the Senate had to do the work of a Director of the District Court in Berlin.

The lengths to which this practice was carried is shown by a statement of Kerrl, the former Prussian Minister of Justice, on 18th February 1934,[2] according to which at that time out of 1034 Judges in Berlin only 374 had been left in their old positions. In certain other branches of the administration, notably the Police, the proportion was even considerably smaller.

The object of these measures was the creation of places for candidates from the Party against a considerable number of whom disciplinary action had been taken by the former

[1] Speech of Dr. Frick, Minister of the Interior, at the first German Officials' Assembly at Munich on 19th October 1937, on the subject of " Party and State in the Law concerning German Civil Service."

[2] Tigges (see *n.* 2, p. 88), *op. cit.* p. 163, *n.* 51.

Government, and whom that of the Third Reich had reinstated in their old posts by legal methods.[1] These measures were originally subject to a time limit,[2] but later extended up to the date upon which the new Civil Service Law came into force.[3]

The new German Civil Service Law [4] retains the oath [5] that was introduced after Hitler became head of the State, whereby each Civil Servant has to swear that he will be faithful and obedient to the Führer of the German Reich and People, that he will obey the law, and that he will carry out his official duties. The Constitution, which was the main point of the former oath, is no longer mentioned.

An official must bring to the notice of his superior officer anything that might jeopardise the existence of the Reich or the Party, whether or not it has come to his knowledge by virtue of his official position.[6] The official's sense of responsibility and independence of conscience are destroyed by the fact that he no longer enjoys security of tenure which he formerly had, provided he did nothing to make himself liable to criminal or disciplinary action, but can be retired by order of Hitler if it appears that he can no longer be relied on always to support the National Socialist State.[7] The word "unreservedly" is wanting here, so the provision is easier to apply. This covers, among other people, University Professors, so that learning and teaching are no longer unfettered. According to Frick's speech,[8] moreover, the provision will, owing to the unity of Party and State, always have effect if an official who is a member of the Party leaves it either voluntarily or involuntarily.

In the event of conflict between a man's duty as State

[1] Law of 23rd June 1933.

[2] Law of 7th April 1933 up to 30th September 1933. Law of 22nd September 1933 up to 31st March 1934. Law of 22nd March 1934 up to 30th September 1934.

[3] Law of 26th September 1934.

[4] Law of 26th January 1937.

[5] Law of 20th August 1934.

[6] Law of 26th January 1937.

[7] Paragraph 71 of the Law of 26th January 1937.

[8] *N.* 1, p. 183.

official and his duty as Party member, his official duties have precedence until the case is decided by a higher authority,[1] since it is also to the interest of the Party that the State machinery should be complete in itself. For the same reason the official is under an obligation to keep State secrets within the Party.

The influence of the Party is assured by the fact that the Führer's deputy, or the Party leaders nominated by him, must be heard before any official is appointed.[2] Officials who at the same time occupy the position of sub-leader in the Party or in one of its subsidiary organisations, may only be moved with the concurrence of the Party. Occupation of Party and State positions by the same man has proved of so little value in the middle and lower grades, such as those of *Kreisleiter* and *Landrat* [3] or Mayor, that the system has been abandoned for those grades.

To ensure that all officials are trained to become true Nazis, the Reich Federation of German Civil Servants was, as from 10th November 1933, made an associated federation of the Party—a collective organisation that took the place of some nine hundred separate Civil Servants' Federations. It is the only unified officials' Federation recognised by the Party and the State ; and it is subject to the supervision of the Minister of the Interior and under the management of the Leader of the Reich Civil Servants, who, like the sub-leaders under him, came from the Party office for Civil Servants. The property of the former federations and associations was liquidated and transferred to the new Reich Federation.[4] Officials are forbidden, under pain of imprisonment, to form new associations without permission of the Minister of the Interior.

The efforts of the Party to inspire the officials of the diplomatic and consular services with the " new thought "

[1] Administrative Decree of 29th June 1937.

[2] Decree of 10th July 1937.

[3] The *Kreis* is the smallest administrative subdivision of a Prussian or Bavarian province. The head of this subdivision is the *Landrat*, and the equivalent Party officer is the *Kreisleiter* (District Leader).

[4] Law of 27th May 1937.

would fill a chapter. In addition to Ribbentrop's subsidiary organisation, which has continued in existence since his appointment as Foreign Minister, a special department of the Ministry of Foreign Affairs was established [1] with the object of centralising supervision over all Germans living abroad and of directing and administering all matters relating to them. The head of this new department is Regional-Leader Bohle, who is also Leader of the Foreign Organisation of the Party, so that here again the two offices are occupied by one person. In his State capacity he is responsible to the Foreign Minister, and in his Party capacity to the Führer's deputy. He attends meetings of the Reich Cabinet at which matters under his control are dealt with. Since his appointment to these two posts, the double staff working under him has grown enormously. It is not a question only of the registration and control of Germans of every sort and description who live abroad, but also of the realisation of those tendencies that for the new " People's community " transcend the frontiers of the State.[2]

The closest possible association between Party and State exists in the case of the Police. This is shown by the fact that Himmler, the Chief of Police, is given a " unified " title, viz. : " Leader of the Storm Troopers and Chief of the German Police in the Ministry of the Interior." [3] All matters throughout the Reich dealt with by the Police are under his jurisdiction, and he is authorised to attend all meetings of the Reich Cabinet at which matters with which his department is concerned are dealt with, and to that extent to deputise for the Minister of the Interior in the event of the latter's absence.

(*h*) *Gestapo and Concentration Camps :*

There is an anomaly in connection with the Gestapo (Secret State Police) due to two causes, *viz.* its origin, and the rivalry between Göring and Himmler. The

[1] Decree of 30th January 1937.
[2] See p. 126, pp. 165–6.
[3] Decree of 17th June 1936.

Gestapo was called into being by Göring for use in Prussia as a political police force responsible directly to him.[1] Later it became an independent branch of the Administration, with Göring, the Prussian Prime Minister, as its Chief and Himmler as Deputy Chief and Inspector.[2] Though, as a result of the transformation of the Reich into a unified State and the consequent amalgamation of the Prussian Ministry of the Interior with that of the Reich, Göring lost the post of Prussian Minister of the Interior, yet he remained Chief of the Gestapo; and to that extent Himmler is subordinate to him and not to Dr. Frick, the Reich Minister of the Interior. Himmler's aim is to abolish this state of subordination.

The Gestapo carries on its activities through the Secret State Police Bureau (Gestapa) in Berlin, frontier commissariats, and thirty-five State Police Depots, which were specially established for the provincial police districts throughout the whole Reich.[3] In proportion as every department of life has become permeated with politics, so the scope of the political police has increased. Everything and everybody without exception come under its supervision: the Party and its subsidiary organisations; non-members of the Party, and particularly members of former parties, not excluding the German National Party; all the rest of the population—with party members co-operating as agents of the Police; foreigners in Germany and Germans, including refugees, abroad; factory workers; the postal, telephone, and land, water, and air transport services, including the staffs employed, etc. etc.

In doing its work the Gestapo is hampered by no fundamental laws or other constitutional rights. At any time of the day or night, with or without reasonable cause, its officers may force their way into private apartments, carry out searches and arrest people, listen to telephone

[1] Prussian Law of 26th April 1933.

[2] Prussian Law of 30th November 1933.

[3] Prussian Decree for administration of the Gestapo Law of 10th February 1936.

conversations, not excluding those of the highest officials, etc. The Gestapo has installed in the former palace of Prince Albrecht in Berlin technical apparatus that enables it, in conjunction with the Post Office installation, to exercise secret control at any time over any telephone apparatus. The "temporary suspension" of the fundamental laws of the country [1] "was changed forthwith into permanent abolition, since all that matters is the maintenance of the People's community, and not of the freedom of the individual."

Originally it was legally possible to contest the orders of the Gestapo in disputes concerning administrative matters before the District Court in Berlin.[2] But the Gestapo did not allow this to interfere with their plans, and enforced the execution of their orders without waiting for the decision of the Court. They also ignored the regulation, approved by the Minister of Justice, that they must allow the defendant to be legally represented in cases in which they were concerned. The official in charge of the case decides at his own sweet will whether the Gestapo should hear Counsel for the defence or not; and it depends on him whether the process shall be carried on courteously or in a brutal and overbearing manner. There have been cases in which Counsel has been forced by the Gestapo to lay down his brief. Such a case arose in 1934, when Counsel acting on behalf of a foreigner presented a document officially protecting his client against a threatened deportation order. Its contents were so convincing that the risk of deportation was apparently eliminated. The barrister was summoned to the Gestapo and told that he had been placed on the "black list" because he worked for foreigners. It was pointed out to him that it was to the interest of the country that this particular foreigner should be deported, and this his legal representative must place above all other considerations. The lawyer gave up his brief, and was

[1] See p. 53.

[2] *N.* 1, p. 187, and Prussian Law of 1st June 1931. The District Court is a special court for disputes involving public departments and administrative questions.

rewarded by having his name removed from the black list.

The Gestapo counters all criticism of their activities with the same severity. In an action for treason in 1935 Counsel for the defence was obliged in the course of duty to censure the Gestapo official for having drawn up incorrect protocols at the preliminary hearing. A few days later he was summoned to the Gestapo, and only escaped "protective arrest" on account of his reputation as a good patriot.

Thus was such opposition as dared to raise its head suppressed; and when at the beginning of 1936 the law [1] provided that the orders of the Gestapo should no longer be subject to review by the administrative courts, thus making them incontestable, what had long been the practice was legalised. The Chief Administrative Court of Prussia in Berlin,[2] in accordance with the spirit of the "new times," interpreted the new law as meaning that it was also for the benefit of the regular police in cases dealt with by them but which might have been dealt with by the Gestapo. Since in practice this would cover almost every case, the effect is that the law no longer affords protection against police orders, which the *former* jurisdiction of the Chief Administrative Court guaranteed.

The concentration camps fall within the sphere of authority of the Chief of the Gestapo. They are under the "Inspectorate of the Concentration Camps Black Guards Reichsführer," commanded by Black Guards Group-Leader Theodor Eicke. On 15th July 1932, Eicke, as Leader of the Black Guards and Storm Troopers in the Palatinate, together with other Nazis, was sentenced to two years imprisonment for an offence against the law concerning explosives. He was guilty, with his accomplices, of manufacturing eighty high-explosive bombs. In March 1933 he was freed under Hindenburg's amnesty,[3] so the

[1] Paragraph 7 of the Prussian Law of 10th February 1936.
[2] Judgment of 19th March 1936.
[3] See p. 149.

Third Reich could reward him with command of the newly established Inspectorate.

The " Camp Regulations " of this Inspectorate provide that all prisoners, irrespective of origin, rank, or profession, are to be treated as " subordinates." Each man, old or young, must from the first day inure himself to military order and discipline. All Black Guards, including Commandants, are " superior officers," and to be saluted as such. When a prisoner is spoken to by a Black Guard he must stand to attention. Those who shirk their work, criticise the State or Government, or the officials and the arrangements at the camp in a letter, or express approval of Communist or Liberal leaders or parties, or communicate incidents that happen in the camp to the outside world, are regarded as " incorrigible." There are three grades of detention. New prisoners are placed in grade 2. Those who have fulfilled the following conditions may be transferred to grade 1, which means hope of release :

(1) No offences against the camp regulations.
(2) No arrest.
(3) Unremitting willingness to work.
(4) Fundamental change of heart in favour of the " National Socialist German People's Community."
(5) Written renunciation of the ideas of Marxist or Leninist Communism, which are destructive of the State.
(6) Written denunciation of former officials of the Communist or other Parties who carry on underground agitation.

Grade 3 implies risk of permanent detention. The following are transferred into this grade :

(1) Leading politicians and intellectuals whose former activities have been especially injurious to People and State.
(2) Prisoners who have been sentenced to close arrest or solitary confinement.
(3) Prisoners in the " forced labour " department.

(4) Criminals under protective arrest.
(5) Jews and other persons who have made themselves conspicuous as a danger to the People or as common political agitators.
(6) Former Nazi Leaders who have abused the confidence of their Führer to their own pecuniary advantage, or have shown themselves to be traitors.
(7) Prisoners from whose letters it is clear that they resolutely refuse to change their views.

Hair and beards have to be cut once a fortnight, the hair at the back of the head and on the temples being close-cropped. Prisoners who fail to observe this regulation have to keep their heads permanently shaved.

A list is exposed of those regarded as *saboteurs*, agitators, or mutineers, as dangerous to the commonwealth (*e.g.* by clandestinely communicating to a foreign visitor information regarding the camp and its inmates), or as incorrigible ; of those suspected of attempt to escape ; and of all accomplices.

Prisoners who give information to the Commandant or his subordinates of any plot against the camp regulations that has come to their knowledge, in time for it to be frustrated, are given favourable treatment.

The " Disciplinary and Penal Regulations " of this inspectorate, which are also still in force, prove that recourse is continually had to flogging. This is shown by the following provisions :

" Any prisoner who makes derogatory or derisive remarks to a Black Guard, intentionally refrains from giving the prescribed salute, or otherwise shows by his behaviour that he will not submit to order and discipline, will be punished with eight days close arrest and twenty-five strokes each at the beginning and the end.

" Any prisoner who in letters or other communications makes derogatory remarks about National Socialist leaders, or about the State and the Government or their officials and institutions, or who expresses approval of Marxist or

Liberal leaders of the 'November Parties,'[1] or who communicates to the outside world incidents in concentration camps or asserts his innocence knowing himself to be guilty, and thereby is the cause of public disturbance, will be punished with fourteen days close arrest and twenty-five strokes each at the beginning and the end."

Under revolutionary law agitators are hanged, and mutineers shot at sight. *Sabotage* is punishable with death, "*sabotage* by neglect" with solitary confinement. In cases of doubt, *sabotage* is assumed. Punishment prolongs the term of imprisonment in the camp. Forced labour includes hard labour or exceptionally filthy work, which is done under special supervision.

The following quotation from the introduction will show the spirit of these regulations :

"Tolerance implies weakness. In the knowledge that this is so, ruthless action will be taken where this appears necessary in the interests of the Fatherland. The respectable citizen, goaded by agitators, need not fear that he will be affected by these penal measures. But to the political agitators and intellectual demagogues, of whichever tendency, we say : 'Beware lest you are caught, or you will feel strong hands closing round your throats and your mouths will be shut according to your own prescriptions !'"

A prisoner who does not have his hair cut in accordance with the regulations, or who sits or lies on his bed during the day without his Company Leader's permission, is punishable with five days' *close* arrest.

These "regulations" of the Black Guard Inspectorate were issued in the autumn of 1934 and are still in force. They are based on the "revolutionary law," in order that the death penalty may be included without sentence by a Judge—more than a year after July 1933, when the Führer declared the revolution over.

Flogging was and still is continually employed for the extraction of the truth from prisoners. The divisional

[1] The common Nazi term for the left and centre parties under the Weimar Republic.

leader of a certain Inspectorate openly admitted to me that his own daily practice was to have men and women suspected of Marxist tendencies flogged, since otherwise he could not get the truth out of them. In course of time specialists have arisen who know exactly which instruments to use on which parts of the body so as to cause their victims the greatest pain.

Black Guards from various camps, including the notorious one at Dachau, were marched past the Führer under Himmler at the Party Rally in 1937, during which Hitler presented them with colours consecrated by the "Blood-Flag"[1] for their valiant services "in the face of the enemy."

(*i*) *The "new education" of Youth:*

The performance of such "services" against defenceless prisoners can only be rendered possible by a training that kills all sense of decency and fosters the instinct of brutal cruelty in these young men, and at the same time makes of them nothing more than automats and willing subjects of mass-psychosis.

It is not only the aspirants for service as guards at concentration camps, but the whole male and female youth of the country, that undergo this training, as will be seen from the following:

A master at a High School for Girls consulted me early in 1935 on the following case:

There were two girls in his form who had been close friends from their earliest childhood, and had attended the same school for six years. One was a Jewess, but had been allowed to remain at the school because her father had fought in the war. Her friendship with the "aryan" girl had not been affected by the "new spirit." A new headmaster who had been appointed saw the two girls one day walking in the playground arm in arm, and ordered the

[1] The flag carried by the Nazis during their abortive rising in 1923 in Munich, which is spattered with the blood of the "heroes" who were killed. Hitler now "consecrates" new colours by touching them with it.

master to separate them at once. The master refused, in the special circumstances of the case, to do so, and finally told the headmaster that he himself had better take whatever steps he considered right. Foaming with rage, the latter rushed into the playground and violently abused the " German " girl before the whole school for " dishonouring her race " by her friendship with a Jewess.

Both girls left the school. My client heard nothing more of the Jewess ; but the " German Girls' Federation " and the school authorities put every possible obstacle in the way of the " aryan " girl's plans for her future, and finally forced her to acknowledge that the headmaster's views were right. The master was threatened with disciplinary action because he himself had not put a stop to the " scandalous state of affairs " in his form and had offered " passive resistance " to the intervention of the headmaster.

In the autumn of 1935 I had occasion to discuss the fate of some common acquaintances with two young lawyers who had recently joined the " Black Corps " and had been attached to a unit of the Black Guards. For some years I had known both as decent fellows and as young men who were likely to make good in their profession, but it was some time since I had seen them. I could hardly believe my ears when they suddenly said to me : " Why should we go all soft and sentimental ? If any of us begin to feel sympathy for Jews and people, we do what we're told to do, and shout in unison : ' The Führer says every Jew's a swine, so every Jew *is* a swine ! The Führer says every Marxist's a scoundrel, so every Marxist *is* a scoundrel ! The Führer says stamp out the Jews and Marxists, so we stamp out the Jews and Marxists ! We don't rack our brains about things, but grit our teeth and get on with it, and shout Heil Hitler ! ' "

Another case showing the fruits of this training was the murder of Dollfuss : his assassins refused to allow him either medical assistance or extreme unction when he lay mortally wounded.

This deadening of all sense of decency is to be seen even in the administration of justice.

A man was accused on three occasions of gross cruelty to his two-year-old son. On the first he had beaten the boy about the head so severely that for days the child was in pain and his head was covered with bruises. On the second occasion he took up the boy and threw him with all his strength on to a divan. On the third he forced the child, who was suffering from diarrhœa, to walk barefoot on the stone-floored kitchen and to relieve himself there. The Supreme Court of Appeal only found the man guilty of gross cruelty on the first occasion ; on the second, it held that it was not a case of " gross " cruelty, because the divan *might have been* upholstered ; and on the third, it found that, although to make the child walk barefoot on the stone floor was perhaps unfeeling and not a very good way of bringing up a child, this could not be held to be " gross " cruelty in view of the child's habit of wetting its bed ! Moreover it may not have been very cold, and the boy may have been accustomed to running about with bare feet. The Supreme Court refused to accept the argument that because in the first case the father had shown that he had a callous nature, the same applied in the other two.[1]

(*k*) *Local Self-government :*

The Prussian Army was resting on the laurels won for it by Frederick the Great. Politically the State of Prussia was in a backward condition. Napoleon had completely conquered it and had forced on it the Peace of Tilsit.[2] Among the measures introduced at the instigation of the Prussian Minister, Reichsfreiherr vom Stein, under Frederick William III., to enable it to throw off the Napoleonic yoke, was local self-government. The people were no longer to render obedience mechanically to the King and his officials, but to take their share of responsibility in public life. So

[1] Decision of 19th August 1938. *Law Weekly*, 1938, p. 2808.
[2] 7th July 1807.

they would have an interest in the State and would realise that its existence was necessary to their own welfare. Stein had supplemented his own ideas on reform by study of the English methods of self-government, without however using them as his model.

The Prusso-German conception of self-government, as it was developed under the Bismarck Empire and the Weimar Republic, was well defined. In broad outline it was that the voters elected the municipal or communal delegates, who in their turn elected the Mayor and the other members of the magistracy. The administration of the latter was under the control of the delegates, who also framed the municipal or communal budget, granted the necessary moneys, and controlled the expenditure. The members of these communal "parliaments" did not represent geographical divisions of the commune, or guilds, or any other separate interests, but the whole commune. Nor were they bound by the instructions of their constituents. The guarantee of self-government lay in its protection by an independent administrative jurisdiction, which could be appealed to successfully if the State exceeded its powers of supervision and interfered in the self-government of the commune.

Besides questions connected with its own government, the commune dealt with certain matters on the instruction and on behalf of the State.

Officials of the commune were described as "indirect State officials," because it was only through their appointment by the commune that they exercised their functions for the municipality and the State.

The National Socialists have retained the idea of communal "self-government" to the extent that they use the name; but in accordance with their familiar practice, they have changed its character, and so, as they allege, brought it within "the spirit of its author, Reichsfreiherr vom Stein." [1]

In their interpretation a commune represents a living

[1] Preamble to the Municipalities Order of 30th January 1935.

process of the people, in which persons of the same race but of different professions live together in a self-contained settlement. This " commune-community " is a local body, and has, for its own particular sphere of life, an organisation that the State watches over, and the members of which the Party inspires with the " new spirit " and trains in that spirit.[1] The Führer-concept is not directly applicable in the relationship of State and commune, since it is not a question here of living persons but of legal corporations.[2]

The commune is governed by the Mayor upon the Führer principle. Under him are the Deputy-Mayors. In each commune there is a Party representative appointed by the Führer's deputy, who usually also occupies the post of District Leader (*Kreisleiter*) [3] in the political Party organisation. For the city of Munich it is Hitler, for Berlin it is Göbbels.

The Mayor and his Deputies are chosen by the Party representative, and if this choice is approved by the competent State authorities, then the commune is obliged to make the appointments.

The Mayor appoints expert advisers for certain branches of administration or public utility undertakings ; and for this purpose he may also delegate local councillors, who are regarded as representatives of the commune. They are not elected, but nominated by the Party representative, and their functions are only advisory, for they have no rights of control even in matters of finance. This method of procedure, which is entirely opposed to the idea of self-government, is alleged to be consistent with it because the Party represents the people composing the commune ! The State has no authority to interfere in the composition of the local council. The Party can give the Mayor no instructions, though he is bound in certain administrative matters to obtain the concurrence of the Party representative.

The appropriate Regional Leader of the Party can give

[1] Maunz (see *n.* 1, p. 82), *op. cit.* p. 70.
[2] *Ibid.*, *op. cit.* p. 71–2.
[3] See *n.* 3, p. 185.

its representative binding instructions regarding the despatch of his duties.

Supervision over the communes is exercised by certain State authorities, the decision as to the competent authority in each case depending upon the size of the commune. The highest supervising authority is the Minister of the Interior. Since the Regional Leaders of the Party are at the same time either Reich Statthalters [1] or Prussian Provincial Governors, it follows that in every case the State supervising authority and the superior officer of the Party representative is the same person, so that divergence of views between Party and State is avoided.

In the exercise of its right to supervise, the State can call for information on all matters, annul decisions and orders of the Mayor on the grounds that they infringe the law or run counter to the aims of the government, and demand that measures already taken on the strength of such decisions and orders shall be voided. If the Mayor does not obey, the State has the right to give him detailed orders as to what he shall do, and if necessary appoint a commissary at the expense of the commune to carry out its orders by force.

The communes no longer have a right of appeal to the administrative courts against anything done by the State in the exercise of its supervision. Legal protection against interference by the State supervising authorities has been abolished. The only remedy, if a department of State has given the orders, is to lodge an official complaint with the Reich Minister of the Interior.

In his capacity as a Leader, a Mayor can, within certain limits, act more freely in matters of "self-government" so long as he does nothing to set in motion the all-powerful State supervision ; and this comparative freedom, combined with "communal representation," the functions of which are only advisory and the persons composing which are nominated by the Party representative, is described as

[1] Governors of the various countries of the Reich, *e.g.* Prussia, Bavaria, Saxony, etc.

" National Socialist Communal Self-government within the true spirit of Freiherr vom Stein."

C. The Supreme Arbiter

(a) His Absolute Power :

The conversion of the judicature into a mere instrument of power for the Führer is the natural outcome of National Socialist ideology.[1] At first the danger of this was not so clear as it afterwards became. Hitler's promise to the Reichstag to maintain the independence of the administration of justice [2] was shortly followed by a solemn declaration, made in his name by Dr. Frank, Leader of the legal profession of the Reich, that the government would strictly adhere to the principle of the independence of the judges.[3] The apparent discrepancy between these assurances and Nazi ideology was ignored in practice, a state of affairs that has been mutely accepted.

The suppression of the alleged " revolt of Röhm," 30th June to 2nd July 1934, was one of the peak points of these developments.

There was strong dissatisfaction among the people, to which von Papen, who was still Vice-Chancellor, ventured to give formal expression in a public speech,[4] denouncing the muzzling of the German press, the confusion of " vitality " with " brutality," and the continued domination of a single party. He stood for freedom of religious conviction and conscience ; and he asserted that great Germans were not produced by propaganda but that their greatness depended on their deeds and was acknowledged by history.

At the end of 1933 the strength of the Storm Troopers, under Röhm's command, was about 600,000 men, and by the spring of 1934 had increased to three millions. Röhm, who had been a Captain in the Bavarian Army, had brought

[1] See pp. 131-4 and 137. [2] See pp. 74 and 136.
[3] *German Lawyers' Journal*, 1933, Col. 1271.
[4] On 17th June 1934 at the University of Marburg.

the Storm Troopers to a high pitch of organisation, and was one of Hitler's strongest supporters in his struggle to seize and retain power. He was a Reich Minister without Portfolio, a member of the Prussian Council of State, and State Secretary to the Statthalter of Bavaria. He was personally courageous, and had been wounded three times in the War. Nevertheless he did not cut a favourable figure, for his virtues were clouded by unbridled vice. This dual character was also manifested by his choice of collaborators. Besides criminals like Edmund Heines, Chief Group Leader of the Silesian Storm Troopers, who created an uproar in the court itself when the murderers of Potempa were sentenced,[1] and instigated the vilest outrages against his political and racial opponents, there were men of unblemished character belonging to old Prussian army families, who had only joined the Storm Troopers from patriotic motives. Of these, von Heydebreck was in command in Pomerania, von Detten and von Falkenhausen in Saxony, and von Altenhausen and von Mahrenschild under Chief Group Leader Ernst in Berlin and Brandenburg. Röhm did not conceal that he expected to be made Minister of War to organise the new army, whose backbone was to be the Storm Troopers and Black Guards under his command as Chief of Staff. He also sympathised with the left, or Socialist, wing of the Party, whose former leader, Gregor Strasser, had negotiated with General von Schleicher at the end of 1932 but had subsequently fallen out of favour with Hitler.[2] After Gottfried Feder had proved a failure as State Secretary in the Ministry of Economics, this wing was no longer represented among the leaders. The people's "yearning for Socialism" was more ardent than ever, and this had been so for years not only among the working classes but also—and particularly—among the youth of every class. Students and young officers hated the profiteers and speculators as much as the young workmen did, and such of them as were still in work grieved to see their friends unemployed. A typical case showing the state of

[1] See p. 124. [2] See p. 72.

mind of many young Reichswehr officers was the behaviour of Lieutenant Scheringer, who was convicted in 1929 of insubordination and Communist activities. He had originally held Nazi views, and had gone to see Hitler personally, to try to get detailed information as to his economic policy. His journey was in vain, and so he became a Communist. Others, belonging to every class and profession, took the opposite road. What they heard at Socialist and Communist meetings did not touch their emotions, which was what they so ardently desired ; and the eternal dry-as-dust lectures on political economy began to bore them. There was too much " reason " about it all ; and at the Nazi meetings that was the last thing they were offered. I talked to many of them in Berlin and, at the end of 1931 and the beginning of 1932, on the Obersalzberg near Berchtesgaden. I had gone there by a chance the significance of which I did not realise. These youths, with their heads in the clouds, were actuated by sheer idealism, the danger of which is that it can so easily be abused. None of the things that were expected after Hitler's seizure of power came to pass : the destruction of capitalism—the central plank in the Nazi platform ; the nationalisation of the big stores ; the taxation of war and speculative profits ; none, in fact, of the measures that had been promised. Dissatisfaction was rife, especially in the Storm Troopers ; but the men remained true to Hitler, confident that the " socialist " revolution would follow the " national " revolution. And so they awaited the Führer's commands.

The Reichswehr under von Blomberg opposed the incorporation of the Storm Troopers and Black Guards in the army, and only agreed to the Black Guards continuing to exist as a special police unit. They called upon Hitler to take the necessary steps, and at the end of June 1934 induced the associations of ex-officers to expel Röhm, thereby manoeuvring Hitler into a position in which he was obliged to take action. Big industrial interests supported the demands of the Reichswehr, for they saw in their fulfilment a guarantee for the further revival of trade and industry.

By way of consideration for this support, Hitler had promised them full freedom of initiative [1] in their efforts to bring about this revival.

Röhm had no intention of revolting. He had gone to Wiessee on Tegernsee for a holiday with some friends and drinking companions, for the Storm Troopers were on leave during the month of July 1934. Hitler avoided a frank discussion with him, but flew on the night of 29th June with Göbbels from the Rhineland to Munich, whence he proceeded to Wiessee under a strong escort of his Life Guards. Röhm and the other officers of the Storm Troopers were fast asleep. Hitler had them arrested and all of them shot except Röhm, whom the Führer "honoured" with permission to shoot himself. On his refusing this honour, he too was shot. At the same time a purge was undertaken throughout the Reich under the leadership of Göring, Himmler, and Major Buch, President of the Investigation and Settlement Committee of the Supreme Party Court. All the leaders of the Storm Troopers and Black Guards referred to, and many hundreds of their companions, were shot. Some of the victims were brought by air to Berlin to be executed in the courtyard of the former Cadet School barracks at Lichterfelde, in which divisions of Hitler's Life Guards are now housed. For three days and nights residents in the neighbourhood were terrified by the sound of the firing squads. It was not by way of punishment for actual crimes that these men were shot down, but to be rid of people who knew too much, who were popular, and who were likely to make a nuisance of themselves when the next item on the programme was due to be carried out.

The Reichswehr went so far in its objection to the Storm Troopers as to refuse to readmit any of its former officers who had meanwhile served as leaders of the Storm Troopers. Thus, owing to the transformation of the Storm Troopers, even they formed a by no means negligible centre of dissatisfaction.

[1] See p. 73.

It is doubtful whether the Reichswehr had previous knowledge of the fate in store for Röhm and the other leaders of the Storm Troopers. That action was being taken, however, was known to them, for Blomberg had given the order to stand to. It is also doubtful whether they approved of the shooting of men like Gregor Strasser or ex-Lieutenant Scheringer. But Hitler and his assistants took the opportunity of clearing out of the way other "potential" enemies or of revenging themselves for former opposition, even after the lapse of more than ten years.

General von Schleicher and his wife were shot by a detachment of the Black Guards at his house in Berlin, and General von Bredow suffered the same fate.

The former Bavarian Prime Minister, von Kahr, who had thwarted Hitler's march to the Feldherrnhalle in Munich in November 1923, had his skull smashed with an axe while at work in a field on his estate in Bavaria.

Von Papen's collaborators, von Bose and Edgar Jung, who had helped him to compose his Marburg speech,[1] and his Adjutant, von der Decken, were all "done away with." Von Papen himself only escaped the same fate through the protection of the Reichswehr.

The following men were also murdered: Dr. Klausener and Dr. Beck, Leaders of the Catholics in Berlin and Munich respectively, and other prominent Catholic politicians such as the "Peasant Doctor," Georg Heim, the founder of the Bavarian People's Party (the Bavarian Centre); Dr. Gerlich, Editor-in-Chief of the "Münchener Neueste Nachrichten"; Freiherr von Aretin, Leader of the Bavarian Catholics; and Camphausen, Leader of the Catholic German National Party. As a precautionary measure, Freiherr von Gutenberg, Leader of the Bavarian Monarchists, was also murdered. Those of the victims who occupied official posts, like Dr. Klausener, who was head

[1] See p. 199.

of a department at the Ministry of Transport in Berlin, were arrested in their offices by detectives.

Hitler gave orders for the reorganisation of the Black Guards and Storm Troopers. Himmler, Leader of the Black Guards, was made responsible direct to him. The new Chief of Staff, Lutze, who succeeded Röhm, was given the Storm Troopers only, who were disarmed and considerably reduced in strength. In an edict addressed to the new head of the Storm Troopers [1] Hitler castigated the leaders of the Storm Troopers for their dissolute life, referring in particular to the purchase of luxurious motor cars, their indulgence in extravagant food and drink, their homosexual practices and perversion of innocent youth, and their general corruption.

In his edict Hitler said nothing about the treasonable plans of Röhm and his fellow-sufferers. From his estate in Neudeck, Hindenburg sent Hitler a letter of thanks and appreciation on 2nd July 1934. He said that from the reports sent to him it was clear that Hitler, by his firm action and by personal intervention, had stifled all treasonable activities at birth. It was from this that the suggestion of treason became known to the public, and it must have been made in the reports to Hindenburg, for which his son and Adjutant, Oskar von Hindenburg, and Dr. Meissner, State Secretary, were responsible. On 3rd July, General von Blomberg, the Minister of War, thanked Hitler for his firm and courageous action. The National Socialist clergy (German Christians) proposed to hold a series of Thanksgiving Services for the rescue of the country from dire peril through the action of the Führer, the greatest statesman and soldier of all time !

On the same day a law [2] was decreed, signed by Hitler, Dr. Frick, Minister of the Interior, and Dr. Gürtner, Minister of Justice, declaring that " the measures taken on 30th June, and 1st and 2nd July, for the suppression of treasonable attacks were taken legally, in defence of the State in an emergency."

[1] Of 30th June 1934.

[2] Of 3rd July 1934.

The Reichstag was convoked, and Hitler exclaimed in his speech : [1]

> " If we are reproached for not leaving matters to be dealt with by the ordinary courts, I can only say this : in that hour I was responsible for the fate of the German nation, and thus I was the supreme arbiter of the German people."

Here, for the first time, therefore, he claimed the right, in his capacity as " supreme arbiter," to have people put to death without recourse to the law. He did not hesitate to defend himself by falsely accusing his predecessor, General von Schleicher, of high treason ; and he asserted that there had been criminal communication between him and Röhm, with a certain Herr von A. as intermediary. That the death of hundreds of people remained unexplained by these fantastic accusations he entirely ignored, and he also ignored the fact that many people had lost their lives owing to confusion of name and other mistakes.

Popular excitement only calmed down on the surface. Although it was again dangerous to stand and talk in the street in groups, yet people continued to discuss matters. Indignation, particularly among officers on both the active and the retired list, rose high on the subject of Hitler's speech and the attitude of the Reichswehr under von Blomberg, which was apparently doing nothing to vindicate the honour of the murdered officers. A number of Generals and Staff Officers tried to obtain an audience of Hindenburg, but without success. Then they wrote to him. Meanwhile the wave of murder crossed the frontier into Austria. On 25th July 1934, Dollfuss, the Chancellor, was assassinated. Hour after hour they awaited from the lips of the old Field-Marshal the word that should free the people from this nightmare—but in vain, for on 2nd August he died, and Hitler stepped into his shoes.

A law to meet the position that would arise on Hindenburg's death had already been decreed,[2] for otherwise the

[1] On 13th July 1934.

[2] Law concerning the Head of the State, of 1st August 1934.

President of the Supreme Court would have been the acting head of the State until the new one was elected. In an edict [1] to the Reichswehr, von Blomberg emphasised that it " would march forward to the future full of confidence in the Führer of the German Reich and People."

Hitler wished the law creating him Head of the State as well as Chancellor to be confirmed by plebiscite, declaring that " all State authority must proceed from the people." [2] This " free " plebiscite was taken on 19th August 1934. There were seven million adverse votes; and in several districts, especially in the country, more votes were cast in Hitler's favour than there were names on the register. The excess could not be accounted for by the voting papers of people travelling. Many were induced to vote in Hitler's favour by fear of the consequences of not doing so, and by a false rumour that the Government had invented a secret means of ascertaining who voted against him. Others again were mindful of the Saar plebiscite, which was to be held at the beginning of 1935 and which must not be jeopardised by internal dissension. And, last but by no means least, the voters were influenced by the story put about by von Papen, Hindenburg's son, and Göbbels that Hindenburg had in his last will recommended Hitler as his successor. History may show whether the old Field-Marshal or the German people had been imposed upon.

However that may be, the plebiscite gave Hitler the appearance of right. It was also interpreted as popular approval of all the constitutional changes that had been effected, which however were far from being authorised by the Enabling Law [3] and other " lawful " measures.

The importance of the Reichswehr grew as a result of the reintroduction of conscription.[4] The fall of von Blomberg, in February 1938, was doubtless assisted by certain forces that had not forgotten his attitude towards the murdered Generals. No *public* rehabilitation of them ever

[1] Of 2nd August 1934.
[2] Decree of 2nd August 1934.
[3] See p. 164.
[4] Law of 16th March 1935.

took place, but it is said that they were subsequently given a funeral with full military honours. Field-Marshal von Mackensen stated at a dinner of the Knights of the Order "Pour le Mérite," the highest Prussian military Order, that they had fallen on the field of honour! Did he know when he said that, that leaders of the unit who had murdered them had been rewarded and had received promotion in the Black Guards?

The immediate attitude of the lawyers concerning the significance of the expression, "supreme arbiter," was undecided. Even Professor Carl Schmitt, of Berlin, who probably holds the speed record among lawyers in the change from democratic to Nazi convictions, wrote that it remained to be seen whether any, and if so what, constitutional effect the law [1] concerning emergency defence measures [2] was going to have.

Hardly a year passed before the doctrine that is to-day taught by every law tutor in the German universities, was generally accepted, *viz.* that the Führer and Chancellor is not subject to the criminal law.[3] The provisions of the Weimar Constitution,[4] whereby the President of the Reich can be removed or, like the Chancellor, charged with breach of the constitution or a law of the Reich, are void.[3]

The Führer can quash any proceedings.[5] He can have members of the Party tried before the Party courts as well as or instead of the ordinary courts. Events like those of 30th June 1934 no longer need to be legalised by a special law, for they issue from the recognised right of the "supreme arbiter." If a man is taken prisoner by the Gestapo, or "shot while attempting to escape," or killed in a concentration camp, this is done "in the name of the supreme arbiter." And when such things happen in the mass, with looting and the burning of peaceful citizens' houses, the supreme arbiter suffers these outrages to proceed

[1] See p. 204.
[2] *German Law*, 1934, p. 321.
[3] Merk (see *n.* 2, p. 125), *op. cit.* pp. 656 and 658.
[4] Articles 43 and 59.
[5] Article 2 of the Law of 16th February 1934.

unchecked for a while, and then appoints a certain date from which the ordinary courts shall again function. So it was after 30th June 1934,[1] and after the pogroms of November 1938. The culprits need not tremble, however, for they will soon be pardoned by the Führer.

(*b*) *The New Position of the Judges:*

It was not to be supposed that the independence of the judges, which had already been shaken by their liability as State officials to dismissal at any time,[2] would be unaffected by the power of the supreme arbiter. It was explained that the departure from ordinary legal procedure on 30th June 1934 was justified ;[3] but it had to be admitted at the same time that such procedure is still essential to judicial independence, the meaning of which is that the judge must decide in certain cases without regard to any other State authority. Further it was declared that the solemn promises of the Führer were not inviolable dogmas, but must yield to the superior demands of the "people's life."[4] Finally, those who had penetrated deepest into the mysteries of the Nazi juridical philosophy, asserted that Hitler had, as supreme arbiter, brought judicial independence to perfection.[5] Can there be a more independent judge than the Führer, they ask. And do not the judges share that same independence when, as his trusted representatives, they exercise their office according to his will? Should the people not be grateful to the Führer for allowing the judges to work in the old forms in order to make it easier for them to change over to the new ideology?

According to this interpretation, therefore, Hitler breaks no promises so long as he allows the judges, even to the smallest degree, to bring to bear their acumen and legal training in forming their decisions. But in practice they

[1] Order of the Führer of 4th July 1934, printed in the *Völkischer Beobachter.*
[2] See *n.* 7, p. 184.
[3] Tigges (see *n.* 2, p. 88), *op. cit.* p. 180.
[4] *Ibid., op. cit.* p. 21.
[5] *Ibid., op. cit.* p. 175.

are doing this more and more mechanically, so that their functions are of little more significance than those of policemen executing a warrant of arrest. Therefore the theory that judicial authority is exercised by independent courts that are subject only to the law [1] has been retained and, in fact, restated, as for example, in the law concerning the national economy.[2] This theory has, of course, been altered out of all recognition ; and the position of absolute power occupied by the supreme arbiter has given tremendous impetus to the change in the conception of the law.[3] The Führer is authorised to instruct the judge as to his decision in any case ; [4] he can decree a law retrospectively, which the judge must take into account in forming his decision ; [5] and finally he may quash any judgment of which he does not approve or make regulations rendering it ineffectual. This has happened repeatedly in cases in which the civil-law rights of parties have been interfered with.

This change in the position of the judges is still going on. It did not come into operation as quickly as in many other cases, but is now proceeding with greater and greater momentum. It is true that Dr. Frank, Leader of the German legal profession, had already founded the " Academy of German Law " in July 1933. This was given the status of a public corporation of the Reich.[6] Its object is to carry out the Nazi programme in closer connection with the competent authorities. But it was some years, for instance, before the principle was established that the Nazi Party programme, which had been regarded since 22nd May 1926 as unalterable,[7] is the fountain-head of

[1] Article 102 of the Weimar Constitution ; paragraph 1 of the Law concerning the constitution of the law courts.

[2] Of 25th February 1938. [3] See pp. 131-4 and 137.

[4] Tigges (see *n.* 2, p. 88), *op. cit.* p. 173.

[5] See *n.* 2, p. 88 ; case of Van der Lubbe, *post*, p. 273 ; Law of 22nd June 1938, which was made retrospective to 1st January 1936 in order that in a case *sub judice*, in which the accused persons had set traps for motor-cars with a view to robbery, the death penalty might be imposed.

[6] Law of 11th July 1934.

[7] Feder (see *n.* 3, p. 139), *op. cit.* p. 18.

the law,[1] and must be interpreted according to the Führer's explanations and pronouncements.

The Nazi Reich Federation of German officials and the Nazi *Rechtswahrer* Federation [2] are responsible for the requisite training.

(*c*) *The Führer Principle and Judicial Decisions :*

To prove that he is impartial, a judge must support his decisions by giving his reasons for them. The activities of the judicial mind that are necessitated by this are not to the liking of the Nazis, in whose view the judge, in weighing the evidence in a case, should be swayed by the " sense of blood and race." For this reason it has been suggested that the Führer principle should be introduced in those courts in which a bench of judges sit ; that is to say, that decisions should be by vote in the same way as in the Party courts.[3] So far, however, this method has not come into force in the ordinary courts. It is urged in their favour that it is not desirable that the deliberations upon the verdict should be accompanied by too much discussion, for this would entail the risk of giving intellectual considerations too prominent a place in them, and of too much argument upon details, which would have the result of obscuring the general view of the case.[4] Although the provisions of the law for the constitution of the courts, so far as concerns both deliberation and voting,[5] have not yet actually been amended either for civil or for criminal procedure, and though the draft of a new measure regulating German criminal proceedings provides that the bench as a whole, and not the president alone, shall decide the verdict, yet the provisions concerning the order in which votes are to be taken and the requirement of a specified majority are to be dropped.[4] This suggestion is based on the theory

[1] *Law Weekly*, 1936, p. 2504, and 1937, p. 2639.

[2] See *n.* 2, p. 174.

[3] See p. 176.

[4] Freisler in the *Report of the Official Commission on Criminal Procedure* (see *n.* 1, p. 66), pp. 59 and 63.

[5] Paragraphs 192–8.

that the "natural co-operation" between leader and followers will, through the appointment of "reliable" judges by the Ministry of Justice, develop also in the relations between the presidents of the courts and the assistant judges. The Ministry regards the president as the man who is responsible for a true verdict. Here also "anonymity" of judgment must be done away with as the "natural enemy of truth." If the president does not succeed in bringing his assistants round to his opinion, the verdict must be by vote, even according to the new draft regulations; but they provide that the manner in which it is taken, and the matters to be voted on, shall be left to the bench as a whole to decide.

Probably anyone who has ever had to submit to a bench of judges a matter every detail of which he thought he had thoroughly mastered, will have noticed how discussion brings out and elucidates many unsuspected points of doubt. Even the reproach of "anonymity" misses the mark. Because a vote is taken it does not follow that it must be taken in secret; the two things—voting and secrecy—arise from two different causes. There are courts—an example of which, if I am not mistaken, is the Supreme Federal Court of Switzerland at Lausanne—in which the vote is taken in public. When the law requires the vote to be taken in secret, this does not relieve the judge of responsibility for his vote. Under the Führer principle, however, the suspicion arises, often only too well founded, that the assistant judge has not had the courage of his convictions to the extent of voting against the others. The law prescribes secrecy in proceedings during deliberation and voting in cases tried before lay magistrates and juries only.[1] Unlike advocates, judges are not liable by law to punishment for violation of professional secrets,[2] though the professional judge is bound, as a natural consequence of his official obligations, to maintain secrecy. Still, a change in the trend of ideas in favour of the State

[1] Paragraph 198 of Law concerning constitution of courts.
[2] Paragraph 300, Reich Penal Code.

has taken place, though, as far as possible, the authorities avoid admitting it.

A judge of the higher criminal court shook hands with me, cordially but sorrowfully, when we were parting at the end of 1935, and said : " Believe me, I'm sick and tired of it all. But what can I do ? I have a wife and family, and only small private means. If I don't vote in the secret ballot the way the Public Prosecutor demands, or if I make any remark against the régime, my fate will be the same as yours, if not worse. For all these things become known the next day in the Ministry, by what means I don't know."

This case is by no means an exception, and from it it is tolerably clear that in course of time the Führer principle will apply without reserve to judicial findings. It also demonstrates clearly the feelings of those judges, of whom there are by no means few, who are not convinced Nazis. This, naturally, they do not allow to be generally known.

One of my friends was President of a District Court near Berlin. When I was visiting him he told me confidentially, but quite definitely, that he was greatly troubled about what the law in Germany was coming to. The next morning there was a large meeting of officials in the court building, and I could not believe my ears when my friend made a speech enthusiastically lauding the new régime. To me he excused his action by saying that he had done it in the interests of the Fatherland !

The strides made by the Führer principle in arriving at judicial decisions are not accounted for by the fact that verdicts are no longer " anonymous." They never have, in fact, been truly " anonymous," for the names of all the judges are known and they are all responsible for their verdict being in accordance with the law. Even the judge who is outvoted must share the responsibility for the verdict—a principle that is the essence of jurisdiction by a bench of judges. However the matter may be explained in theory, there is no other method of ascertaining the will of the majority than that of the ballot. Its

opponents describe it as "gambling with majorities"—a procedure that cannot give true expression to the will of the people. Actually it is not the "anonymity" of the verdict that should be done away with under the Führer principle, but the element of chance, which may also be present when the decision is arrived at by a single judge. The likelihood of a mistaken judgment, however, is reduced when several judges, who are individually responsible, must vote, and, particularly in criminal cases, when a specified majority is required for a verdict of guilty.

So far as the interested parties and their mode of action are concerned it may be said that every case conforms more or less to type. But apart from that, each has its own features. To bring these out, and so to cut out from the pattern a piece of individual human life which justifies an individual verdict, is the task of the advocate. When the views of opposing counsel are in acute conflict, and when it is clear that the judges are not yet unanimous, then the mental duel that he must engage in with opposing counsel or the public prosecutor gains both in precision and in depth. It is just when the judges themselves do not know what course their discussions will take under the influence of the pleadings that each person concerned must exhaust every possibility and overlook nothing that may be of importance in arriving at the verdict. In German legal proceedings the danger that the judges may already have made up their minds is not inconsiderable, because at least two of them—the examining judge and the president—are fully conversant with all the details of the case and are therefore not dependent on the speeches of counsel. A presiding judge who is really conscious of the rights and duties attaching to his position will feel more comfortable if in his discussions with his colleagues he finds his opinion either confirmed or opposed, and can share his responsibility with them. All the same, his position is of particular importance, since he gives the casting vote. But when the president himself is subject to the Führer principle, and obliged to act in accordance with it, then his first care will

be to give a verdict in accordance with political expectations. Everything that is contrary to these views is simply either ignored or made use of against one of the parties. Conflict of opinion, the element of all life, is nipped in the bud. That, according to the Nazis, is as it should be.

Those professors of jurisprudence who under the Weimar Republic held the view that the fundamental idea of a judge's duties was obscured if they were used to serve political ends, now welcome the domination of the law by the " code for the regulation of the people's life," and the fact that this has done away with the distinction between law and politics.[1]

(*d*) *Limitations on Resort to the Courts :*

Three methods adopted by the Nazis in the elimination of ordinary justice may be noted :

The first method is to take a number of cases out of the hands of the courts and have them dealt with by government departments, whose judgment is unfettered by considerations of abstract justice and whose only point of view is the bureaucratic one.

The second method is to transfer cases from the ordinary courts to special courts consisting wholly or partly of the same officials who have dealt with them administratively.

The third method by which justice is administered by executive officials and not by the courts is effected by the promulgation of a general law for the confiscation of individual objects or the whole of a person's property, a procedure that was formerly admissible in respect of specific parts of a person's property only, and under certain conditions, each case being judged on its own merits.

That National Socialism is based on private property [2] is one of the trump cards played by the Nazis against Soviet Russia. The Soviet constitution [3] protects the citizen's

[1] Carl Schmitt, Berlin, 1926. *Veröffentlichung der Vereinigung der Staatsrechtslehrer* (*Publication of the Union of the Teachers of Public Law*, Periodical), Vol. 1, p. 97 ; and Tigges (see *n.* 2, p. 88), *op. cit.* p. 175, *n.* 110.

[2] Feder (see *n.* 3, p. 139), *op. cit.* p. 17.

[3] Articles 5, 6, and 10.

right to the income derived from his labours, his savings, and objects of personal use and comfort, everything else being the property of the State or the collective economic associations. Thus the principle that all men are equal before the law is adhered to. Under the Weimar Constitution, property was guaranteed.[1] Private property could only be confiscated if in each individual case it had been determined by a legal judgment that it was being used, or was intended to be used, for the commission of a crime or an offence, or had been obtained as a result of such an action and belonged to a criminal or his accomplice.[2]

The Third Reich has empowered the chief government departments to confiscate the property of Communists,[3] or of those " hostile to the People and the State." [4] The same regulation applies to the rights of third parties and the debts encumbering these properties as applies to the property of the Trades Unions.[5] In this way the Nazis obtained unencumbered possession of the property of all political parties from the Communists to the German Nationals (their former partners in the government), and the organisations connected with them. In the same way the régime has taken possession of all property in Germany of those who have been deprived of citizenship.[6]

Appeal to the ordinary courts is in no case allowed.

Hitler's campaign is also directed against " productions of degenerate art." He gave orders that such of these objects as were in museums or collections open to the public should be removed and placed in safe custody, and, so far as they were in the possession of Germans or of legal corporations in Germany, that they should be confiscated for the benefit of the Reich. He decides the use to which they shall be put ; [7] and it is within his descretion, where hardship arises in individual cases, to order such

[1] Article 153. [2] Paragraph 40 of the Reich Penal Code.
[3] Law of 26th May 1933. [4] Law of 14th July 1933.
[5] See pp. 80, 81, and Law of 9th December 1937 ; and for Austria, Decree of 18th November 1938.
[6] Laws of 14th July 1933 ; 9th December 1937 ; and 3rd February 1938.
[7] Law of 31st May 1938.

compensation as he thinks right. The owner has no legal claim to this, or any claim for infringement of property.[1]

(*e*) *Vital Changes in Legal Practice :*

Nothing is left of the legal profession but its name. Here, too, Nazi methods have given it an entirely new significance, and now it must in all its branches serve the political requirements of the Führer principle. The lawyer's first duty is now to obey his leader, and not to safeguard the interests entrusted to him. The solicitor or the advocate may do nothing to promote activities calculated either directly or indirectly to harm the State. If he is called upon to represent a person who is dangerous to the people or the State, he must at all times have regard to the interests of the German people.[2]

This means that a lawyer who sacrifices the interests of his client to the political aims of the Nazi Party fulfils his professional duties !

A business man who for racial or political reasons is forced to sell his undertaking, may be lucky enough to find a purchaser who, though he may not pay him full value, at least carries out the terms of the contract. But he may be unlucky, and find a purchaser who will not even pay the full amount of the depressed price and can yet be sure of support from the Party authorities. Nor must he be surprised if his legal representative leaves him in the lurch, for it is the policy of the Third Reich to protect such a purchaser and to exterminate such a vendor.

What is incomprehensible is that certain lawyers who feel themselves obliged to take up such a position have no hesitation in insisting on payment of their fees by their unfortunate clients.

Even those lawyers who had no intention of sacrificing the interests of the State to those of their clients had experience of the customary method whereby the Gestapo persuade the intractable to behave as desired, *viz.* by

[1] Law of 31st May 1938.
[2] No. 5 of the Directions of the Reich Law Chamber.

suddenly summoning them to appear and answer for their deeds, or by placing them under protective arrest. The legal representatives of the widow of an official murdered on 30th June 1934, who were careful to put in a claim for compensation in order to preserve it from extinction, were taken into protective custody and only set free on the withdrawal of the claim. No such claims may be subject to the scrutiny of the civil courts.[1] A similar state of affairs to that obtaining in this case and the one already described [2] arose when the Nazis began to dissolve all the Freemasons' Lodges. Some of these tried, apparently with the sanction of the authorities, to avoid this fate by voluntary liquidation or by appropriate change of constitution and rupture of relations with foreign lodges. On behalf of a lodge of very high repute, a lawyer sued some members for subscriptions in arrear. The result was that one day he was fetched from his office and taken to a concentration camp, where he remained for years.

If a lawyer is asked by the representatives of a man who has been "shot while attempting to escape," to act for them, and if he inspects the body and finds abdominal wounds, he himself will go in danger of his life if he dares to suggest that the "official finding" is wrong. These circumstances so affected the nerves of a friend of mine, although he was a member of the Party, that he asked to be transferred from the provinces to Berlin, so as to avoid having to deal with such cases. The Gestapo now refuses to permit inspection of the body, which is usually cremated at once, and the ashes sent to the relatives by post.

The change in the essential character of the profession is effected in two ways.

All German lawyers belong to the "Reich Chamber of Lawyers" (*Reichsrechtsanwalts Kammer* [3]), a professional organisation, which is led by its President in accordance

[1] Law of 13th December 1934 with supplementary and administrative Decrees of 22nd February 1935 and 11 additional Decrees.

[2] See p. 188.

[3] Regulation concerning the Legal Profession, of 21st February 1936.

with the Führer principle. For each province there is a Chamber of Lawyers under the leadership of a President, which is an administrative department of the superior Reich Chamber. The presidents of both Chambers, and the advisory presidential council of the Reich Chamber, are appointed by the Minister of Justice in consultation with the Leader of the German legal profession. The advisory councils of the provincial Chambers are appointed by the President of the Reich Chamber. The provincial Chambers are " courts of honour " of the first instance. The court of honour of the Reich Chamber in Berlin is a court of appeal. The election of presidents or presidential councils, who at the same time act as judges in the courts of honour, and the fixing of the amount of contributions and the authorisation of expenditure, are therefore functions that are no longer exercised by members of the profession at general meetings.

Lawyers who act as leaders of the professional organisations are members of the Party and of its affiliated Nazi *Rechtswahrer* Federation (formerly the Nazi Lawyers' Federation),[1] whose President is Dr. Frank, Leader of the German legal profession.

Every lawyer who is not prevented on racial or political grounds is expected to join this Federation. Thus he is subject to double control. The " education " in Nazi principles carried on by the Federation is stricter than the supervision exercised by the Chamber ; yet it has come to this, that breaches of those principles are regarded as professional offences, and are punishable as such. The Federation, as well as the Chamber, exercises its own independent jurisdiction over its members in matters of " honour." [2] Thus it may have a lawyer up before its special court of honour for failure to observe his obligations to his Federation, as for example, by sending a letter to a Jew with the customary opening and closing formulas of courtesy.[3] The Federation is divided into regions, which

[1] See p. 174.
[2] Regulation concerning Courts of Honour, of 13th March 1937.
[3] *Law Weekly*, 1938, p. 23.

in their turn are subdivided geographically. The smallest subdivision is known as a *Block*, under the leadership of a "Block Warden." The "education" is carried on by way of "voluntary" meetings attended by representatives of both the smaller and the bigger subdivisions, and the distribution of pamphlets and periodicals. As soon as the leaders think that sufficient progress has been made on any important point, it becomes an offence for a legal practitioner not to apply the principles. Thus, a barrister who accepted a brief from a Jew would thereafter render himself liable to severe punishment by the court of honour, whereas until then this was only forbidden to officials of the Federation.

All existing lawyers' associations, whether professional or social, have been compulsorily merged in the Nazi *Rechtswahrer* Federation; and no new ones may be formed without permission of the Minister of Justice.[1]

The power of the supreme arbiter is shown by the treatment of lawyers in the courts of honour.

A lawyer who had refused to give the "voluntary" Hitler salute, and another who, before Hitler's accession to power, had carried on a private correspondence with a pacifist living abroad, were expelled from the profession by the court of honour. A third, who had allowed himself to be persuaded into sending a love-letter written by a homosexual client who was in prison awaiting trial, to his friend who was at liberty, escaped proceedings before the court of honour because he was a friend of a Minister of the Reich, who was able to have the proceedings quashed.

Legal practitioners who are also members of the Party are expected to set an example to their professional brethren. Those guilty of breach of professional duty are subject in the first instance to Party jurisdiction.[2] Following this example, a legal practitioner must not regard himself as representing the interests of his client only—that is, in criminal cases, merely as defending counsel—but, like the judge, as a

[1] Law of 27th May 1937; and see *ante*, p. 185.
[2] See p. 176.

" protector of the law," whose duty it is to see that the law triumphs. His only duty to his client is to make sure that the latter is not deprived, owing to his ignorance of the law, of any chance of defence to which he may be entitled.

As appears from the following case, this interpretation must necessarily lead to conflict with the lawyer's obligation to professional secrecy :

On the occasion of a visit to a town in the Rhineland, a bishop was greeted by the Hitler Youth with provocative shouts of " Heil Hitler ! " These were answered by some Catholics with cries of " Shame ! " A young Catholic was arrested on suspicion of having taken part in this " demonstration against the Hitler Youth." At the request of his mother, a lawyer, who was also a member of the Party and who had known her and her son for many years, undertook his defence, but surrendered his brief before the actual trial.

Later he was accused before the Party court of having, by undertaking this defence, " abandoned the common front of the Party against political Catholicism," and thus of having acted in a manner detrimental to its aspirations. In the end he was acquitted, but only because he was able to prove that he had undertaken the youth's defence for the purpose, not of obtaining for him as favourable a verdict as possible, but of unmasking the people behind the scenes, and the instigators of the " demonstrations." Moreover, it was to the interest of the State and the Party that in such cases a Nazi *Rechtswahrer* [1] should play his part in the proceedings in court, and not a lawyer who might hold the same political views as the accused and who would try to obscure the true facts of the case in his client's favour.[2]

It was only by abusing the trust put in him by his client, and by using what he had told him as the basis for further inquisitions, that the defending counsel could attain the aim he was working for ; and he was only in a position to serve the " higher " interests of the State and the Party by

[1] See *n.* 2, p. 174.

[2] *Law Weekly*, 1937, p. 3213.

disclosing to the Public Prosecutor what had been told him under the seal of professional secrecy.

The Nazis evidently regard this as perfectly right and proper, for otherwise the lawyer would be punishable for breach of professional secrecy.[1] The trend of Nazi aims is shown by comparison with the question of secrecy in the medical profession, which need no longer be observed if, among other things, its breach " serves an end justified by the need to foster the ' sound instinct of the people,' and if a legal right of paramount importance is jeopardised." [2]

This formula is a charter for the medical practitioners who are convinced Nazis, and a measure of oppression for those who are more conscientious towards their patients.

The Reich of Hitler does not look with favour on professional secrets, because they serve as islands of refuge in the flood of totalitarianism. The very knowledge that the legal practitioner renders himself liable to penalties if he discloses professional secrets without permission, encourages those who are in distress of any kind—whether it be in connection with a civil or a criminal case—to open their hearts and unburden their minds. In this the lawyer's work as adviser is often more important than that as advocate in the courts themselves.

In the time of the Weimar Republic, also, members of the German legal profession never forgot that it was an instrument for the administration of justice and that they must therefore not be betrayed into confusing the protection of their clients' interests with the countenancing of illegality. But they would have indignantly rejected the idea of acting as informers.

A legal practitioner who is a member of the Party is also fettered in the exercise of his profession by the fact that his local leader can order him to refuse or surrender a brief.[3]

[1] Paragraph 300 of the Reich Penal Code.

[2] Paragraph 13, Section 3, of the regulation concerning the medical profession of 13th December 1935.

[3] *Law Weekly*, 1937, p. 3213.

The loosening of the bonds of professional secrecy corresponds to the tightening of the rule as to State secrets. Anyone who, even through carelessness, discloses the contents of an official document marked " secret " or " confidential," which it is his duty to keep secret, is liable under certain conditions to a long term of imprisonment.[1] Since under the Nazi judicial system even documents relating to the most trivial matters, as well as the indictment itself, are marked " secret " in almost all cases that have any bearing on politics, defending counsel can no longer confer with his colleagues on doubtful legal points or get at the truth by calling his own witnesses and examining them, as he was formerly entitled to do. For this he is expected to ask for the permission of the Gestapo !

The wife of a client who was under arrest came to see me one day, but all we could do was to discuss generalities. The Gestapo had ordered her to keep secret all details about the search made at their home, about her own examination, and about all, in fact, that she had undergone during the investigation. There was nothing for her to do, therefore, but to take her departure without having said a word of all that lay so heavy on her heart. This was the practice of the Gestapo for years before it was legally confirmed.

The State sees to it that it is made as difficult as possible for lawyers to carry on their practices who have not convinced the authorities that they have experienced a genuine " change of heart."

A barrister may only undertake a defence before the State Court, or the Senates of the provincial courts of appeal, if he has been officially nominated for that purpose, or if his choice has been sanctioned by the President of the court. This sanction may be withdrawn at any time, even during the actual trial.[2]

Further, a counsel may by authority of the Minister of Justice be refused permission to inspect documents, public registers, etc., in the interest of public order ; and this

[1] Law for amendment of the Penal Code of 2nd July 1936.
[2] Article IV. paragraph 3, of Law of 24th April 1934.

without any reason being given, and even if he has a legal right to such inspection.[1] The departmental officials give an assurance that they will only make the most essential use of this power. The people must have faith in their leaders ! Yet the question remains : why should they want to take power to destroy one of the foundations of just and lawful defence if they are never going to use it ? Why have they turned a guaranteed right into a matter within the discretion of a Government department ? Why did they not keep to the regulation that gives defending counsel an inviolable right after presentation of the indictment, to inspect all the documents, and even before then to see certain of the depositions ? The fact that defending counsel used to be granted inspection of the other documents, even before the presentation of the indictment, was a sign that he was trusted not to abuse his privilege by prejudicing the result of the investigation.[2] I personally have always, even during the years I practised under the Nazi régime, been allowed to inspect all the documents in a case early in the proceedings, and I appreciated the confidence shown in me. And that would have continued to be so in most cases and with most lawyers if the authorities had not granted to their " model " Nazi lawyers a monopoly in this privilege. Thus it is in their power to reduce the efficiency of a defence that is unwelcome to them, and to make helpless people still more helpless.

To encourage the sense of social obligations among legal practitioners, the Nazi *Rechtswahrer* Federation has established a so-called *Treuedienst* (Fidelity Service). By this means the poorer classes may obtain free legal advice, either at special offices at which the lawyers of a certain district take it in turns to attend, or from a lawyer to whom they are at their request given a special card of introduction. But legal advice or aid in those criminal matters which cause the people the greatest concern are purposely excluded from this service.

[1] Law of 30th September 1936.

[2] Paragraph 147 of Regulation concerning criminal proceedings.

It is hardly credible that the members of a profession should allow themselves to be bullied into renouncing the fundamental principles of that profession. I cannot refrain from paying a tribute here to a " true " Nazi lawyer who was suddenly impelled by his conscience to carry out his professional duties faithfully. In a case connected with the events of 30th June 1934 a Berlin barrister, Voss by name, refused to surrender documents that his client Gregor Strasser had confided to him for the purpose of the case. He resisted forcible abstraction of them and was shot by the Black Guards. Thus he laid down his life to guard his professional secrets.

(*f*) *The New Generation of Lawyers :*

That is an example that the new generation of lawyers should follow in striving to solve the problems of their future profession. But, alas, their training is based exclusively on Nazi principles. As has always been the case, the early stages in the training of a law student are the same, whether he is going to be a judge, a legal practitioner,[1] or a public prosecutor. After a three-year course in jurisprudence at the university he must take his first State examination in law. This is followed by a qualifying course of three years (not, as previously, of four years), as *Referendar* in the courts, the public prosecutor's office, a legal practitioner's office and a government department.[2] Service in a Party office may also be counted as part of the administrative training.[2] Then comes the final State examination. The law examinations are held under the auspices of the Reich.[3] Roman Law is no longer an examination subject. The examinee must also be prepared for a " character test " consisting of questions from Hitler's *Mein Kampf*, the history of the National

[1] There is no such distinction in Germany, as there is in England, between barrister and solicitor. Nor are the judges recruited from the Bar.

[2] Paragraph 2 of Law for the constitution of the courts, and Decree concerning training in jurisprudence of 4th January 1939.

[3] Decree concerning training in jurisprudence of 4th January 1939 ; paragraphs 49 and 50 of Administrative Decree of 13th September 1934.

Socialist Party and the lives of Horst Wessel and other leaders. In accordance with the Führer principle, the president has the sole decision as regards the marking of the papers and the passing or otherwise of the examinee. The other examiners are merely his advisers. The result of the examination depends largely on whether he has proved a success on the drill-ground of the "Hanns Kerrl Community Camp," [1] in military exercises and in the labour camp. He is expected to qualify for the "Storm Troopers' Sports Badge."

Having passed the final State examination, the *Referendar* receives the title of *Assessor*, and must leave the service of the State unless he is transferred to "probationary service" [2] for the position of judge or public prosecutor, or to similar service in a legal practitioner's office.[3] The candidate cannot claim, as of right, to be appointed at all, the decision on this point lying with the Minister of Justice, who also decides whether, after the end of the probationary service, which usually lasts for a year, he shall be admitted to "service as candidate." He is then given the title of *Gerichtsassessor* or *Anwaltsassessor*. The period of service as candidate is three years, after which the Minister of Justice decides whether the *Gerichtsassessor* shall be admitted to the service of the Reich as a judge or public prosecutor, and the *Anwaltsassessor* to practice as a lawyer. Since in future the functions of a *Notar*,[4] hitherto carried out by ordinary legal practitioners, are to be carried out as a special branch of the profession,[5] a number of the Assessors can apply for appointment in a similar way as *Notariatsassessor* and later for admission to practice as a *Notar*.

A full thirteen years will thus have passed since he left

[1] Edict of the former Prussian Minister of Justice, Kerrl, of 29th April 1933.

[2] Decree concerning training for the office of judge or public prosecutor of 29th March 1935, together with administrative regulations of 26th June 1935.

[3] Regulation concerning lawyers of 21st February 1936.

[4] *I.e.* those lawyers who are concerned with conveyancing, formation of limited companies, etc. They are regarded as officials.

[5] Regulation concerning "Reich Notaries" of 13th February 1937 and Supplementary Decree of 26th June 1937.

school before the budding lawyer knows for certain whether he is to be a judge, public prosecutor, legal practitioner, or *Notar*. And it is possible that before the time is up a report throwing doubt on his dependability as a good Nazi may force him to give up the career. In such a case he is dismissed simply by administrative order, against which he has no right of appeal to the law. On admission to " probationary service " the *Assessor* is paid a salary by the Reich, the Reich Law Chamber, or the Reich Chamber of Notaries. Since 31st March 1936 the scandal of unpaid employment of *Gerichtsassessors*, which had been in force for many years, was put a stop to.

A former guarantee of the independence of the judicature was that every *Gerichtsassessor* must be admitted either to State service or to practice, so long as he had not been guilty of misconduct. Since the supply exceeded the demand, those *Assessors* who were not promoted out of their turn on account of exceptional qualifications had to work without pay until their turn arrived, assuming of course that they were determined to obtain an appointment and could afford to wait. Permission to practise was not subject to limitation as regards numbers.

This overcrowding of the legal profession justified a change of regulations. There can be no objection to suiting the supply to the demand ; but it is impossible to agree that it is right for the realisation of the young lawyer's ambitions to be entirely dependent on the will of a government department. Those who are admitted to the study of the law, or to preparatory service as *Referendars*, should be allowed the right they formerly had to become judges or to practise as lawyers. But that is an ideal the Führer principle does not approve of.

The Third Reich believes that by this method it will get the new generation of lawyers it wants for the " protection of the law." It is convinced that it will no longer be necessary to retire young judges or public prosecutors on account of failure to serve the interests of National Socialism.[1]

[1] Paragraph 71 of the Civil Service Law. See pp. 184 and 208.

D. Occupational and Social Organisation

(*a*) *The Composition of the New Occupational Bodies :*

It is incorrect to describe the new occupational bodies as " collective associations." [1] Here, too, the distinguishing marks are obligatory membership and the Führer principle. The so-called " self-government " of these bodies consists solely in the fact that the Reich treats them and their leader as complete units, and exercises control over the leader only through the appropriate Minister.

For example the Reich Estate of Nutrition is directed by the Reich Farmers' Leader and is supervised by the Minister of Food and Agriculture. The president of an administrative district and the *Landrat*,[2] as subordinate public authorities, exercise no control over sub-divisions of the Estate of Nutrition within their district.

To all intents and purposes, the distinction between so-called " occupational self-government " and state control is often non-existent, since the supreme position in each is frequently occupied by the same man. Thus, Darré is both Reich Minister of Food and Agriculture, and at the same time Reich Farmers' Leader; while Göbbels is President of the Reich Chamber of Culture, because the law prescribes that his functions shall be performed by the Reich Minister of National Enlightenment and Propaganda.

Occasionally the importance of an occupational body is enhanced by the transference to it of duties belonging to the State. Thus the Reich Chamber of Culture and its subsidiary chambers, and not the appropriate department of the State police, grant licences for theatrical or film undertakings to carry on their work.

The occupational bodies include either members of a specific profession, *e.g.* Lawyers, Physicians, or Pharmaceutical Chemists, who compose their respective Reich Chambers, or persons engaged in working towards a common end, as

[1] See p. 81.

[2] See *n.* 3, p. 185.

e.g. in agriculture, art and science or independent trade, when they are included in the Reich Estate of Nutrition, the Reich Chamber of Culture, or the three occupational bodies representing Trade and Industry, *viz.* Manufacture, Commerce and (independent) Handicrafts, respectively.

In general, the smaller the occupational body, the stricter is the State control. The Minister of the Interior has the same wide powers of interference in the case of the Chambers of Physicians, Veterinary Surgeons and Chemists as he has with regard to communal self-government.[1] In their case also there is an infringement of their " professional self-government " in so far as the presidents of administrative districts, in their capacities as subordinate State authorities, can, after hearing the respective Reich Chamber,[2] order the cancellation of the appointment of any doctor, veterinary surgeon or chemist. In this matter they are not bound by the position taken up by the occupational bodies, nor does the professional standing of the person concerned play any part in their decision, as I discovered from two cases in which I acted as legal adviser. The only facts that matter are those indicating a lack of " national reliability." The person concerned may appeal against the President's decision. The appeal is decided not by the professional " courts of honour," but by an administrative court.[1] The reason for this is not that the occupational bodies have a different idea of " national reliability " from that held by the State, for such a possibility is precluded by the choice of the professional leaders.[3]

[1] See p. 198 and paragraph 80 of the regulation concerning Physicians of 13th December 1935 and the regulation concerning Veterinary Surgeons of 3rd April 1936 ; paragraph 22 of the regulation concerning Chemists of 18th April 1937 together with Administrative Decree of 8th October 1937.

[2] Paragraph 5, Section 2, of the regulation concerning Physicians of 13th December 1935 and the 1st Administrative Decree of 31st March 1936. Paragraph 5, Section 2, of the regulation concerning Veterinary Surgeons of 3rd April 1936. Paragraph 8, Section 1, No. 2, of the regulation concerning the appointment of Apothecaries of 8th October 1937.

[3] See p. 155.

Every occupational body is a "public-law corporation,"[1] and for administrative purposes, therefore, it is not an associated federation of the Party. In this regard, the German Labour Front alone is in a different position. I have explained elsewhere the reasons for this, and the relationship of the Labour Front to the other occupational bodies.[2]

The "public-law corporation" is constituted in one of two ways: either it consists of the whole profession, forming a central body with local affiliated sub-divisions that are only subordinate administrative branches, such as we have seen [3] in the case of the Reich Chamber of Lawyers and its subsidiary Chambers; or else it consists of affiliated sub-divisions representing either geographical districts or particular branches of the profession, each of which (without prejudice, of course, to the central authority) is a legal entity and has its own sub-leader. Thus the Reich Chamber of Culture [4] is divided into the Reich Chamber for literature, the Press, wireless, theatres, music and films and the Reich Chamber of Art. These are "public-law corporations," each with its own president. Each chamber is divided into departments according to the branch concerned. Trade and industry [5] are represented according to the branch concerned, *i.e.* by six main groups—Manufacture, Handicrafts, Commerce, Banking, Insurance and Power Production. These main groups are divided into industrial groups, and, as requisite, into occupational groups and sub-groups. Trade and industry are sub-divided geographically into districts embracing the territory covered by several industrial and commercial chambers. For these districts the occupational groups have established corresponding district groups and have entered into working arrangements with cognate branches of industry. All

[1] See *n.* 4, p. 172. [2] See pp. 81–2. [3] See pp. 217–18.

[4] Law of 14th July 1933 (Chamber of films), Law concerning the Reich Chamber of Culture, 22nd September 1933 and the supplement of 15th May 1934, together with Administrative Decrees of 1st November 1933, 9th November 1933, and 14th April 1937.

[5] Decree of 27th November 1934.

departmental and district groups below the main groups are legal entities, and may sue or be sued under the civil law.

The reason for this distinction is antagonism between the Führer principle and that freedom of movement that is essential to productive industry. Industry has, therefore, been able to limit very considerably the influence of the Führer principle on the working of its occupational bodies. In the case of agriculture, however, and of the activities covered by the Reich Chamber of Culture, the efforts to enforce the realisation of Nazi ideas through the agency of the occupational bodies have been successful. The unflinching application of the Führer principle has resulted in considerable set-backs to industry in those cases.

Industry, as well as the other professions and occupations, has been obliged to accept the Führer principle to the extent that the chief group leaders are appointed and removed by the Reich Minister of Economics. These group leaders in their turn nominate and dismiss the leaders of the subordinate groups. Every leader has limited power to inflict punishment, and has an advisory council, nominated in a similar way. Nevertheless, industry is singular in that each group below the main groups, which is, as has already been mentioned, a legal entity subject to the civil law, has to hold a meeting of its members at least once a year. At this meeting the members are given information about the activities of the group and its financial position, express their opinion, approve what has been done, and decide *by secret vote* whether the leader has their *confidence*. If the group consists of more than 200 members, the advisory council exercises these functions. Further, no group leader may, as in the other occupational bodies, decide on his own account against the majority of the advisory council without the consent of his superior group leader, unless the question is one in which the advisory council need not be consulted.

The same restrictions apply to the corresponding transport groups.[1]

[1] Decree of 25th September 1935.

In the case of compulsory trade-guilds, the meeting [1] has to approve the annual accounts, agree the budget for the coming year and pass certain other resolutions. The master of the guild has to submit a vote of confidence. Any adverse vote, except one of no-confidence in the Master, can on his motion be substituted by a resolution of the chamber of handicrafts.

The Führer principle is thus more effective in the independent handicraft guilds than in the other industrial groups, since the supervisory authority can, within certain limits, stifle any impulses towards autonomy by passing the appropriate resolutions, which is not possible in the case of the other industrial groups.

The appointment of the Reich Minister of Economics as Reich Leader of Trade and Industry was strongly criticised for a considerable time. The hard facts of the daily struggle for existence, and sound business sense, fought against the confused " economic ideas " of the Nazis. The directorate of the " Reich Estate " (*Reichsstand*) of German Industry (Dr. Krupp von Bohlen and Halbach, Thyssen and others) remained almost unchanged by the Nazi revolution, and accommodated itself to the new conditions simply by admitting to the directorate two men who were in the confidence of the Nazis, and by throwing overboard certain members and managers of the " Estate." The Reich Commissioner for Industry on the Liaison Staff of the National Socialist Party, Dr. Otto Wagner, admitted as early as July 1933 that the attacks on leading industrialists for evasion of tax or the smuggling of capital out of Germany during the years of the " Marxian rule " were not made for the sake of justice, but were due to malice or the desire for revenge. Attempts to assist the industrial middle class resulted in the huge stores being subsidised by the government to the tune of twenty million marks, while 600,000 master craftsmen who had hitherto been independent were forced to take jobs as employees. For that reason the post of special Reich Leader of Industry,

[1] Law of 29th November 1933.

held first by Dr. Kepler, the chief industrial expert of the Party, and afterwards by Count von der Goltz, was abolished; and, in spite of obstruction by the Party, experts like Kurt Schmitt, industrial leader in insurance matters, and after him Dr. Schacht, president of the Reichsbank, were able as Reich Ministers of Economics to save industry and the country from collapse. In doing so, they had no option but to set up a compulsory industrial organisation,[1] under which the regulations made were nevertheless constantly being altered. In this compulsory organisation general enactments, such as the law concerning weaving material and the decree concerning fibrous thread played their part. The Minister of Economics, the Minister of Food and Agriculture, and the Minister of Woods and Forests [2] were empowered, each as regards the matters under his jurisdiction, to take measures for the increase of production and the preclusion of risk. The Minister of Economics established supervisory agencies for certain special types of business, with power to intervene and exercise control under his direction. In addition he appoints Reich Commissioners, who are often also leaders of the supervisory agencies.

(*b*) *The Commissioner for the Four Years Plan:*

The friction caused by the confusion between the old and the new authorities, and between the new occupational bodies and the Party offices, threatened to bring the over-organised business world of Germany to a standstill. At the Party Rally in 1936, Hitler therefore announced a new Four Years Plan.[3] For this purpose Göring was authorised to require information from *all* authorities and Party offices, to give them directions, and to take any other

[1] Law concerning trade in industrial raw materials and partly-finished goods of 22nd March 1934 with ten Administrative Decrees; Law concerning industrial measures of 3rd July 1934 and Decree concerning trade in commodities of 4th September 1934.

[2] Law concerning forestry and the timber industry; Law of 3rd July 1934; Edict of 12th July 1935 and Decree of 20th October 1936.

[3] See pp. 93 *et seq.*

steps that might be necessary by the issue of decrees. In these he was authorised to take power, in the event of infringement, to impose sentences ranging from penal servitude and imprisonment to a fine. No limit was set to the fine, which might be either the only sentence or additional to imprisonment. Further he was empowered to impose taxes and order businesses to be closed. All his orders are *binding* on the courts and on the administrative authorities ; and *no compensation is allowed* in case of loss or damage arising from them.

Orders, decrees and proclamations rained down on the people, for in a short space every branch of manufacture and commerce was under strict control, as in war time. Certain raw materials, such as cotton, wool, etc., were not allowed to be used in the manufacture of textiles except with a large admixture of artificial substitutes. The production of these substitutes increased enormously. Control of prices became more and more intolerable. Increases of price were often retrospectively prohibited.[1] In case of infringement, not only was a fine imposed, but the goods in question were confiscated.[1]

These developments have also altered the relationship of the cartels to the industrial occupational bodies. Although the Minister of Economics was given greater power over the cartels,[2] Schacht, in order to preserve their commercial character, made little use of his right to interfere with them. By keeping them distinct from the occupational bodies, and by preventing the application to them of the Führer principle, it was hoped to prevent industry from being paralysed. But their most important and effective function was suddenly rendered inoperative by the official regulation of prices. They could no longer force the non-member who undersold them to raise his prices, because he would thereby have made himself liable to punishment for illegally increasing prices. This, among other things, resulted in the subjection of the cartels to the industrial

[1] See p. 97, and *e.g.* the Decree of 26th November 1936.
[2] Law concerning the formation of cartels of 15th July 1933.

occupational bodies.[1] The latter wish to make use of the cartels' experience to enable them to advise their members in the fixing of prices, so far as the Commissioner for the Four Years Plan does not upset them again. By virtue of this post, together with the others that he occupies, the holder has attained the position of Second-in-Command in the People's Führer-State. The responsibility for fixing prices remains with the individual concern. If the owner gets lost in the tangle of penal ordinances and regulations that are continually being launched—if, say, a manufacturer inadvertently buys wholesale from the producer raw materials that he urgently requires, at retail prices, he does so at his own risk. Planned business organisation, therefore, which ought to mean the greatest possible elimination of risk, in this case increases it.

(*c*) *Effect of the Nazi Organisation on the Old Federations :*

A great diversity of occupational bodies already flourished in Germany before the rise of the Third Reich. There were organisations such as the Chambers of Agriculture, Trade and Commerce, Industry, Medicine and Law, whose members elected delegates and a directorate, which latter had to report to a general meeting held at least once a year. The occupational chambers of the different countries and provinces amalgamated, and formed themselves into one registered society in accordance with German Company Law ; thus all the chambers of agriculture became the German Agricultural Board. Firms carrying on the same or a related business, and members of the same profession, followed suit and formed themselves into industrial federations and professional unions, or established holding companies. The Central Federation of German Retail Traders and the Berlin Press Association are two examples out of many.

But when the Nazis began to build up the new occupational bodies, which they also call " Fronts " to give them

[1] Decree of the Minister of Economics of 12th November 1936.

a military sound, the existing federations had to be brought into line with Nazi views. For one thing this was necessary in order to get any work done at all; but it was also necessary to root out any undesirable elements and any possible sources of danger.

For this purpose the Ministers of Economics,[1] of Food [2] and Agriculture, and of National Enlightenment and Propaganda,[3] were empowered to transfer the old associations within their purview, of whatever legal constitution, to such of the new occupational bodies as represented the same or similar trades or professions. Federations of independent craftsmen, and those covering the various forms of transport, are dealt with by the Minister of Economics in conjunction with the Ministers of Labour [4] and Transport.[5]

Three methods of transfer were available: liquidation, merger, or affiliation, besides confiscation of all property belonging to persons alleged to be hostile to the State.[6]

If the method ordained was liquidation, this was carried out in accordance with general legal regulations. In case of merger, the whole undertaking of the federation in question was regarded as dissolved, and all its property, including debts due to and by it, passed to the new organisation and was treated as a separate estate. Liability for the debts taken over was limited to this separate estate. The new organisation could give notice to determine contracts with "undesirable" employees, whether or no this was permissible under their terms. Nor could any agreement between the absorbed association and the employee either preclude the right to give such notice or prejudice its financial effect.

If affiliation was the method adopted, the "leader" of the new organisation could demand that the president

[1] Laws of 27th February and 27th November 1934.
[2] Laws of 15th July and 13th September 1933.
[3] Laws of 14th July and 22nd September 1933.
[4] Laws of 29th November 1933 and Decrees of 15th June 1934 and 18th January 1935.
[5] Decree of 25th September 1935.
[6] See pp. 80, 215.

and the members of the managing committee and of the supervisory council should be retired and nominate others to replace them.

Any regulations contrary to these measures were disregarded ; and no person or organisation affected by such measures was entitled to oppose them or use them as a basis upon which to claim compensation.

Any legal action concerning a claim in respect of services rendered, pensions, accident compensation, or anything else, taken against a liquidated federation before an ordinary court or a labour tribunal, had to be suspended and the documents passed to the competent Minister, whose decision was binding on the courts. If the federation was not liquidated, the Minister had power to make " suitable " reductions in all monetary claims against it, or to fix a time-limit for them, and to annul or vary contracts and resolutions of federations or companies, his decisions being binding on all affected, including the courts. In case of doubt whether any measure was within the new legal regulations, the decision, similarly binding, lay with the competent Minister. In no case could a claim for indemnification be made.

In this way the following federations, among others, disappeared : the German Agricultural Council, which had existed since the foundation by Bismarck of the German Empire ; the Reich Land League (previously the Farmers' Union) ; the Union of German Christian Peasants' Associations ; the Agricultural Co-operative Credit Society, founded by F. W. Raiffeisen ; and the multifarious associations and institutes connected with the Press, literature and so forth.

The scope of this process of centralisation and absorption may be seen from the fact that there were included in the economics section of the Reich " Estate " of German Industry (formerly the Reich Association of German Industry) about 1500 trade associations, and in the socio-political section (formerly the Union of German Employers' Federations) 46 principal and 1977 subsidiary associations,

and 290 mixed industrial associations with at least 2735 subordinate associations.

In this transformation of the old federations into the new occupational "Estates," the Ministers referred to exercise the same power as that exercised by the Minister of the Interior in connection with the Associations of Civil Servants,[1] and by the Minister of Justice [2] in connection with the Lawyers' Associations. There is a difference, however, in that here the Reich Civil Servants' Federation, and the Nazi *Rechtswahrer* Federation, *i.e.* associated federations of the Party,[3] were the ones that absorbed the old associations. These are evidently always chosen when there is no other State or occupational organisation available that corresponds to the old one, which happens when the associations are not for purely professional purposes, but are also social clubs.

This scheme is admirably adapted for dealing with all the innumerable professional and social organisations that exist, whether they are for teachers,[4] doctors,[5] property owners,[6] or tenants.[6] The Reich Sports Leader is in charge of the gymnastic and athletic associations, and the Reich Federation for Physical Culture,[7] which is declared to be a National Socialist organisation,[7] is available for the "absorption" of old associations.[8] Even the theatre-goers' societies [9] have to submit to the orders and interference of Göbbels.

All the youth associations have been absorbed by the Hitler Youth, and all the students' associations by the German Students' Society and the Nazi Students' Federation.

In no case can a new association be formed without the

[1] See p. 185. [2] See p. 219.
[3] See p. 174. [4] Law of 27th May 1937.
[5] Decree concerning the medical profession of 13th December 1935, with Administrative Decree of 31st March 1936.
[6] Law of 7th March 1935.
[7] Decree of Hitler dated 21st December 1938.
[8] Edict of 23rd April 1936 and Decree of 1st September 1937.
[9] Law relating to the Theatre of 15th May 1934 and Administrative Decrees of 18th May 1934 and 28th June 1935.

sanction of the appropriate Minister. He can punish contraventions of the laws with fines not exceeding Mk. 100,000 unless imprisonment or fines have already been incurred.

And the fact that meetings of members of occupational and social organisations may only be called by a leader means the realisation of the "code for the regulation of the people's life"—in other words, the end of freedom of association and assembly.

(*d*) *The Führer Principle and Business :*

One of the catch-words of Nazi "economic doctrine" is the necessity of the "return from joint-stock companies to the individual responsibility of the business man." The Führer principle is necessary to individual responsibility in the management of businesses as in everything else.

Legal measures supplementing those already in existence for the purpose of making public the names of persons behind the scenes of certain joint-stock companies are no doubt desirable. What is doubtful, however, is whether the compulsion exercised by means of taxation to transform such companies into private firms [1] has not overshot the mark. In the case of large industrial enterprises compulsion was plainly impracticable for financial reasons. On the other hand, experienced business men and responsible lawyers have given their attention to the possibility of applying the Führer principle to large business concerns. Thanks to them, it was decided, in framing the new Company law,[2] that it should not be applied to the management of joint-stock companies. The reasons given were as follows : [3] "The so-called *Generaldirektorprinzip* (under which the "Chairman and Managing Director" of a company is in practical control) has, as we have discovered in the past, often led, as the result of megalomania and

[1] Law of 5th July 1934, with numerous amending and administrating Decrees.

[2] Law concerning Joint-Stock Companies of 30th January 1937.

[3] Commentary by Schlegelberger, Quassowski and others on the new Company Law, *n.* 1 to paragraph 70.

irresponsibility, to serious abuses and to insolvency. This affected industry as a whole during the economic crisis. The law therefore deliberately refrained from introducing this principle in cases where there is a board of directors. Industry's urgent need of business leaders will never be satisfied by merely appointing a man a leader of business."

Do these memorable words apply only to industry?

(*e*) *Agriculture :*

The average yearly consumption of bread-stuffs in Germany amounts to ten million tons. With a *good* harvest this can be met by the country's own resources. Against this, however, there is a deficiency of one and a half million tons of albuminous fodder that has to be made good by imports. The absence of this must result in a considerable reduction of the stock of cattle, so that doubt arises whether the population can be provided with a sufficient amount of meat and fat. In this connection it is also important to note that the attempt to cultivate oil-producing plants in the country has failed, since neither climate nor soil is suitable for that purpose.

It is true that a certain amount of new ground has been brought under cultivation, as for instance by the reclaiming of moorland ; but that has been a drop in the ocean, especially since existing agricultural land has been reduced by about one million hectares through the construction of motor roads and drill-grounds, aerodromes and other military establishments.

Under the Four Years Plan agriculture, so far as imports are concerned, comes second to the armament industry, as exemplified by the slogan : " Guns before butter ! "

Nevertheless the Nazis hold fast to the blessed word " autarky." A new generation of peasant-proprietors, bound to their soil by the myth of " race," is to win the " fight for production " ordered by the Führer and to make Germany independent of foreign countries for its food.

The aim of the Nazi agrarian policy is to free the farmer from the capitalist system. He is to regard his farm not

only as the soil that enables him to gain a livelihood, but as a sacred heritage that he is to preserve undivided for his male kin.

For this purpose his property was, subject to certain conditions affecting both persons and things, made an "entailed farm," whether he wished it or not.[1] In pursuance of certain measures passed by previous governments these entailed farms were relieved of certain liabilities.[2] The entailed farm consists of the homestead,[3] the implements, and the produce.[4] The farm and implements are entirely inalienable and may not be mortgaged, so that they can never be distrained upon. A "Court for Entailed Farms" (*Anerbengericht*),[5] which consists of a judge of a lower court and two farmers as assistance judges, can grant exceptions. The farmer is at liberty to dispose of all produce that is not of the nature of implements, *i.e.* intended for sale and not for the cultivation of the land. This produce, and debts due to the farmer in respect of its sale (*e.g.* payment for milk sold) are however protected against distraint, garnishee etc., to this extent, that in the case of debts due to the State (*e.g.* for taxes) amounting to more than Mk. 150, distraint cannot be levied before the lapse of one month from the date on which the creditor has given the local Farmers' Leader notice of his intention to do so. Distraint may not extend to articles necessary for the support of the farmer and his family. The local Farmers' Leader may, with the sanction of the Reich Estate of Nutrition, take over the debt, and collect it himself, remit it, or make any other arrangement with the debtor. The same regulation at present applies to distraint for debts due from one subject to another; but sooner or later distraint on farm produce for such debts will be prohibited. If, therefore,

[1] Law relating to entailed farms of 29th September 1933 and 21st December 1936, and the Decree concerning the Law of Entailed Farms of 23rd December 1938.

[2] Law of 1st June 1933 and Decree of 20th June 1936.

[3] The "substance."

[4] Not of the nature of implements.

[5] Decree concerning entailed farms of 21st December 1936.

the farmer has no other unmortgaged property that is not protected against distraint, the " private-law " creditor will go away empty unless the farmer pays of his own free will.

There is very little in the idea that the members of the Reich Estate of Nutrition can help the oppressed farmer, because this occupational body is primarily an educational institution. Are docile and submissive pupils rewarded better than others? On what basis will such assistance be given? Only the leaders, as representatives of the members can decide this, for the latter have no say in the matter.

These measures did not achieve their object, *i.e.* the safeguarding of the farmers' business and livelihood. Farmers with sufficient means in addition to their entailed farm were the exception, and they had no need of protective legislation, which so far as their farm is concerned places them under the tutelage of the Court for Entailed Farms. Without its permission they may not even sign the *Altenkeilsvertrag*, the deed providing for the board and upkeep of their parents when they succeed to the property.

But how are those farmers to manage whose only property is their entailed farm? How are they to procure the manure, the seed, and the machinery needed for their work? The answer is that, under the new laws, which claim to protect them against the results of " unthrifty management," they can, in default of ready money, only procure them by personal credit. In such circumstances, however, business men give no credit, and so the Third Reich, since it cannot itself finance the farmers sufficiently, has no alternative but to break its own laws. At first the farmers were allowed, for the years 1933–39 and under certain conditions, to give the suppliers of seed and manure a prior lien on the growing crops of each succeeding harvest.[1]

Further breaches of the legal principles concerning

[1] Laws of 19th January 1933, 21st November 1935, and 19th November 1936.

entailed farms are due to regulations under the Four Years Plan that make it obligatory on farmers to sell their last grain of corn [1] and to fell timber according to the species and quantities ordered by the Minister of Woods and Forests.[2] By this measure the ostensibly protected property forming a part of the entailed farm, so far as this consists of timber, is "wasted." As in all other similar cases, the Nazis assure the farmers that they can trust the leaders not to make undue use of their powers. Then, it may well be asked, why give them unrestricted power? In practice it has been proved that in this matter there is a wide gulf between the ideas of the leaders and those of their followers.

Moreover, in the laws concerning entailed farms an attempt is made to assert the Nazi conception of the position of women in the State and the community. Since the family is not the "cell" of the State and the community, woman's supreme function is to keep the race pure.[3] More important than the family is the *Sippe*, which includes all a man's male blood-relations who are related to him by male links (*agnates*).

When a farmer dies, the entailed farm is dealt with as a separate estate, apart from any other property he may leave, and is transmitted in accordance with special regulations. If he has ignored these regulations in his will, they take precedence of all its provisions.

The right of succession to an entailed farm follows a legal "order of inheritance," under which the farmer's daughters only rank if his sons, his father, his brothers, his brothers' sons and their sons, are all dead. The widow is only entitled to the *Altenteil*—the right of the parents to board and upkeep when the estate passes to the heir, and she has the right of domicile at the farm. Male and female descendants of the testator who would be entitled to a legal share of his estate, apart from the entailed farm,

[1] Decree of 22nd July 1937.

[2] Decrees of 7th December 1936, 4th March 1938; for Austria and Sudetenland, 28th December 1938.

[3] See p. 156.

if any, can make certain claims on the principal heir for the necessaries of life and, in the case of undeserved poverty, have the right of domicile in return for reasonable help in the work of the farm.

This right of domicile and the settlement between the principal heir and the other heirs with regard to any property of the testator that must be divided according to the law, give rise to many unedifying family quarrels.

The regulations governing the right of succession, laid down by the law concerning entailed farms, conflict both with the centuries-old successional customs of the farmers, whose traditions the Nazis allege they desire to preserve, and with the law of succession, according to which both male and female descendants are treated alike. Farmers in the districts where the right of primogeniture is the rule also resist the introduction of the right of the youngest brother to inherit, whereby the Government wishes to ensure that the time when a principal heir succeeds to the entailed farm by the *Altenteil* deed shall be postponed as long as possible.

The farmers objected strongly to being forced to adopt the new customs regarding succession, and considered the inferior position assigned to their wives grossly unfair, particularly since many of the women had brought with them a considerable marriage-portion, and had worked hard all their lives on the farms. As a result of these objections, the Government had to amend the law [1] so as to allow entailed farms to be owned by married couples, giving the wife a corresponding right of succession. This amendment, which disturbed the structure of the whole law concerning inheritance, shows how premature the Third Reich had been in their new legislation on such an important subject. Unfortunately the amendment did not remove the injustice to the farmers' daughters. This, it is true, was mitigated from the start by an inadequate

[1] Decree concerning the law of entailed farms of 21st December 1936, substituting three previous Administrative Decrees of 19th October 1933, 19th December 1933, and 27th April 1934.

regulation in force during the transition period whereby the daughters, and not the other agnates, are the principal heirs if on the occasion of the first succession after a property has become an entailed farm, there are no sons, or sons of sons, living.

Nevertheless, the injustice of this regulation remains, as I found from the following case :

A farmer's son with whom I became acquainted in a right-of-way action wished to enter into an *Altenteil* agreement with his father. The father, however, was so crippled, both physically and mentally, by a paralytic stroke that I was doubtful whether I could rightly attest the contract as a notary. The son actually managed the farm, although it was still registered in his father's name. On 1st October 1935 the property had become an entailed farm. Shortly afterwards the father died. The son was the principal heir, and his only child was a daughter. She was engaged to a farmer, who by the wish of the father was some day to take over the farm, the daughter being the principal heiress. The legal heir was the son of the farmer's brother. Since, this time, it would not be a case of a first succession after the property had become an entailed farm, the daughter would only be allowed to take precedence of the nephew as principal heir with the consent of the Court for Entailed Farms. The court, however, refused to listen to a plea that had, after all, solid grounds, since the nephew was also a farmer and the entailed farm, therefore, could and ought to be kept in the farmer's *Sippe*. The farmer's desire that the fruits of his labour should be enjoyed by his daughter's family and that some day he should have a grandchild who he knew would later own the farm, could no longer be taken into account.

A vain attempt was made to " emancipate " the farmers from capitalism by the systematic organisation of marketing which in its turn was to be effected by eliminating speculation and stabilising prices. For that purpose the Farmers' Union (*Reichsbavernstand*) was enlarged into the Reich

Estate of Nutrition,[1] which all who were engaged both in agriculture [2] and the treatment of agricultural produce, and all engaged in trade connected with agriculture, were compelled to join. Membership of the Reich Estate of Nutrition is direct and personal. In this respect it differs from the Reich Chamber of Culture, for in that case the individual belongs to an intermediate association, membership of which is obligatory and which is itself a member of one of the subordinate chambers that together make up the Reich Chamber. Agricultural associations, as well as their members, belong to the Reich Estate of Nutrition.

It is often very difficult to determine whether, according to this rule, a man should belong to the Reich Estate of Nutrition or to one of the three Reich industrial occupational bodies.

Only the employees of owners or tenants of agricultural lands are reckoned as persons actively engaged in agriculture, and not those of persons or concerns engaged in treatment of agricultural produce or in trade connected with agriculture.

Further, "agricultural produce" comprises not only the actual farm produce, but also goods manufactured from that produce.

On the other hand the manufacture and sale of articles required for agriculture are functions that must be brought within the jurisdiction of the Reich Estate of Nutrition.

Finally, what is the position of the composite businesses dealing partly with agricultural produce and requirements and partly with other commodities?

The Nazis could find no real solution to this problem, and as usual in such cases evaded the difficulty by means of a vastly increased bureaucracy. The basis for the delimitation of the spheres of action proper to the Minister of Economics and the Minister of Food and Agriculture

[1] Law of 13th September 1933 and Decrees of 8th December 1933, 26th April 1935, 15th January 1934, 16th February 1934, 4th February 1935, and 23rd June 1936.

[2] See p. 83.

respectively is a list,[1] which can be varied by joint order of both Ministers.[2] So far as production, sale and the fixing of prices are concerned, undertakings engaged in agricultural industry and trade are subject to the Reich Estate of Nutrition ; for the rest they are under one of the three Reich industrial occupational bodies. Other undertakings, with genuinely distinct departments, belong either to several occupational bodies, or if they belong to one only, it is subject to the provision that they must follow the policy of the Reich Estate of Nutrition as regards the marketing of their goods and the fixing of prices.

The authority wielded by the Commissioner for the Four Years Plan over the two Ministers may have lessened the rivalry between them as regards their respective spheres of action. The members have ceased to worry about which authority is the competent one, for all they are called upon to do is to obey orders.

Nor has the agricultural depression been relieved by the establishment of " Marketing Boards " under the control of a " Chief for Industrial Association " and affiliated with the branches [3] of industry for which the Boards were formed.

To bring the urban proletariat back to the land is the aim of the Nazis ; the migration of the farm labourers to the towns is the result of their efforts. Oppressive labour conditions make bad housing still more intolerable. Göring is trying to check the flight from the land by remitting the repayment of the marriage-loan, provided the labourer stays on the land for ten years, and by granting further loans out of the public funds free of interest, for the purchase of stock, implements, etc.[4]

The attempt, doomed to failure from the start, compulsorily to transform agriculture from an industry run on unrestricted capitalist lines to a " planned " industry

[1] Paragraph 1 of the Decree of 16th February 1934.
[2] *E.g.* Regulations of 23rd February 1934 and 25th June 1934.
[3] *E.g.* Starch.
[4] Decree for the encouragement of rural migration of 7th July 1938.

became unnecessary as more and more industries were drawn within the scope of the Four Years Plan. Moreover, in agriculture there is one inexorable limit set to the power of the Führer principle, for the heavens will not send sunshine and rain at the behest of man, nor the earth put forth its fruits !

(*f*) *Culture and Economics :*

In all matters within the sphere of the Reich Chamber of Culture, Göbbels rules in unflinching conformity with the Führer principle. As a propagandist he performs his duties successfully—from the point of view of the Führer—although the price paid for this is excessive. But cultural and industrial life, so far as it falls within his sphere of activity, is fast decaying.

Persons engaged in "culture-creating" activities [1] belong, through their departmental associations, to the subordinate Chambers,[2] and through them again are members of the main Reich Chamber of Culture. Their classification overlaps that of the members of the three Reich industrial occupational bodies, so that there are business concerns with double membership.

The duties of the Reich Chamber of Culture, however, encroach upon the domain of the Ministry of Education. I acted for the director of a music-teaching institution. We managed to overcome all the difficulties raised by the Reich Chamber of Culture, and the institution was free to carry on its work in all its branches, when we found ourselves confronted with a new obstacle. For the right to give lectures *about* music the sanction of the Reich Minister of Education had to be obtained, since the Chamber of Culture was competent to deal only with the teaching of music itself !

Professional freedom in activities covered by the Chamber of Culture was abolished from the beginning. It is true that every one who possesses the requisite personal

[1] See *n.* 4, p. 229. [2] See p. 229.

and professional qualifications can claim to be admitted as a member of the departmental association to which he must belong if he wishes to engage in " culture-creating " work ; but in the last resort it is the President who, by administrative order against which there is no appeal to the courts, decides for or against admission.

The only persons who are entitled to appeal to the professional court against an adverse decision, are editors. Even that is not allowed if the rejection is due to opposition by the Minister of Propaganda.[1] The Minister " for urgent reasons of public welfare," can also order the editor's name to be struck off the professional list, in which case no proceedings are taken in the professional court sitting as a court of honour. It is, therefore, within the discretion of the Minister whether an editor is to be got rid of by means of the court of honour or simply by administrative order. In this way many editors have been deprived of their livelihood overnight. Instead of countering jokes about " leading personalities," which are reported to them, by the most efficacious means, *i.e.* by turning the joke against the author, the authorities punish the editor in question with the utmost rigour of the law.

The same applies to a breach of the editor's " professional obligations towards the public." He who reads what the statute has to say about these obligations [1] might well believe that the Nazi editor is a paragon of truth and dignity. Then he remembers that the " Truth " is proclaimed by the Führer alone, through the mouth of his Minister of Propaganda, so that editors frequently find themselves in the strange position of being liable to punishment by a court of honour for failure to observe their professional obligations to the public, and to have their names struck off the professional list, if they tell the truth about any particular subject and this does not happen to correspond with Nazi propaganda.

[1] Law concerning Editors of 4th October 1933 with Administrative Decree of 19th December 1933 and regulation for procedure of 18th January 1934.

The Minister of Propaganda, in conjunction with the President of the Reich Chamber of Literature, decides what the German nation shall read. Any books or other publications that might endanger the "National Socialist Will to Culture," are, by decree of both these gentlemen, put on an "Index" kept by the Chamber of Literature, the result of which is that their circulation is prohibited. A second "Index" [1] is kept for literature unsuitable for young people, on which books are put if the Minister of Education also concurs. On his motion purely technical works, which normally are not affected by this regulation, must be put on the first Index. Inclusion in the second only means that the books may not be offered for sale openly.

There is no appeal to the courts against inclusion in either of these Indices. Infraction of the prohibition that results from such inclusion is, in milder cases, punished with a fine, in more serious cases by expulsion from the Chamber, *i.e.* loss of livelihood. All this is effected by departmental order, against which there is no appeal to the courts.

In 1934–35 I acted for a publisher of nationalistic literature, and in the course of my duties I saw many of the books published by him. They were on such subjects as German history and the lives of leading personalities of the new régime, and consisted mainly of superficial but high-sounding claptrap, and the grossest flattery. Both of us laughed heartily at their contents and headings. But the worse they were the more encouragement the authorities gave to their publication and sale. People were compelled by the various Party agencies to buy them. The same state of affairs obtains in the film industry. New standards are applied in the examination both of German and of foreign films.[2] To ensure that this is done,

[1] Regulation of the Reich Chamber of Literature of 25th April 1935.

[2] Law concerning the Cinema of 16th February 1934, with amendments of 13th December 1934 and 28th June 1935; Decree of 12th July 1936 (foreign films).

all scenarios must now be submitted to the "Reich Film Expert"; failure to comply automatically entails prohibition of the finished film. If the Film Expert considers the scenario desirable, he can, on the motion of the firm that is producing the film, assist with his advice in the completion of the script and the film itself. His instructions must be followed. This, however, is no guarantee that the licence to exhibit will be granted by the Film Censor. Even when it has been granted a "re-examination" may be ordered, whereupon the whole matter must be gone through again with the Film Censor.

Even without an order for re-examination, and all the procedure of censorship, the Minister for National Enlightenment and Propaganda can forbid the exhibition of a film that has been licensed, if he considers it advisable "on urgent grounds of public welfare." A renewed application for licence of a film thus prohibited can only be made with the sanction of the Minister of Propaganda, whose decision is final. In this way he can, under the guise of legality, inflict irreparable losses on undesirable persons. A number of smaller firms that did not enjoy official favour were stamped out as the result of police raids, ordered by the Minister of Propaganda, when they were forbidden to continue working. Either it was suddenly discovered that somebody engaged on the work was racially dubious, or some other ground was invented. Interruption of work for a single week was usually enough to bring concerns of that kind into the bankruptcy court, since the shooting had to be done in a rented studio, and rents and salaries had to be paid notwithstanding the official prohibition. No indemnification in respect of such expenditure was granted either by the Government or the Chamber, even if it was ultimately proved that the prohibition was unjustified.

The position of theatrical undertakings is no better.[1] No intendants, business managers, stage-managers, pro-

[1] Law concerning Theatres of 15th May 1934, with Decrees of 18th May 1934 and 28th June 1935.

ducers, theatre-directors, conductors, orchestra leaders, or other leading artists, may be appointed without the sanction of the competent Minister. Göring is responsible for the State theatres in Berlin, Göbbels for all other State or privately owned theatres. The Minister can prohibit all these persons from following their professional duties if there is any question about their political reliability or their qualifications. The parties affected are heard before the interdict is pronounced. There is no appeal against it; it provides no claim for compensation, but it does provide good grounds for termination of a contract of service between the theatrical employer and the person concerned. In other words, it means permanent dismissal.

The competent Minister can also, generally or in individual cases, either prohibit or require performances of certain plays if he considers this necessary for the accomplishment of the theatre's cultural task. In obeying an order of this kind the theatre management is not supposed to incur losses or additional expense other than those which in the Minister's opinion may be reasonably expected. Further, no claims for compensation may be made in respect of the withdrawal of a play.

The presidents of the Reich Chamber of Culture and of its subordinate chambers can lay down conditions for the working, and the opening and closing, of undertakings that come within their purview. They can make orders concerning important questions that arise, in particular those connected with the nature and terms of contracts between the various groups [1] comprised by the chambers, and they can enforce these orders by fines up to Mk. 100,000.[1] In the case of booksellers, and dealers in music, art, and radio apparatus, the sanction of the Minister of Economics [1] must be obtained, in addition to that of Göbbels. Measures of this sort confer no right to compensation in the event of expropriation. Obstinate or repeated failure on the part of the owner of a business to obey is a proof that he lacks

[1] Paragraphs 25 and 28 of the Administrative Decree of 1st November 1933.

the requisite " reliability," and justifies the closing-down of the concern.

Not only do all these orders and regulations kill the owner's enterprise and initiative, but they make him over-cautious in private life, lest he should lose all he possesses at a stroke.

The Nazis point out that other countries also protect their people against trashy and obscene literature, and that there are standard contracts for certain kinds of business, and so forth. But they fail to add that the regulation of such matters is in the hands of the parties concerned, that anyone who thinks he has been unjustly treated can appeal to the courts and to public opinion, and that there are means of preventing those who wield political or financial power from making an unfair use of it.

(*g*) *Leisure. Life Abroad :*

No one engaged in a trade or profession has either time or opportunity for private life. His leisure, as well as his working hours, is claimed by his occupational organisation. He must listen by wireless not only to the Führer's speeches, but also to those of the sub-leaders, who repeat his words times without number. The political organisation of the Party, which also acts as the agent of the Gestapo,[1] interferes in, and keeps a watch on, his domestic life. Under the *Gauleiter* (Regional Leader) is the *Kreisleiter* (District Leader), under him the local group leader, and under him again the " base-leader " and the " block-warden." The block-warden is a dreaded individual, for he watches over the political discipline of all the dwellers in a particular block of houses. For that purpose he has his confidential agents, especially the house-porters, who, as I can testify from my own experience, are required to keep their superior officers informed on such matters as whether the citizen gives the proper greeting and hangs out the proper flags ; whether he reads the right newspaper and the right books ;

[1] See p. 187.

whether he listens to any foreign wireless stations ; whether he is acquainted with persons who are politically unreliable ; whether he wears the badges showing that he has contributed " voluntarily " to all the street-collections ; whether he owns a worthy portrait of Hitler ; whether his meal on the appointed day consists of more than the regulation single course.

The block-warden and his agents may enter every dwelling, and even visit the kitchen in order to inspect the contents of the pots and pans.

Here the regulations of the German People's Winter-relief [1] Fund play a part. This is a charitable organisation, already in existence before the advent of Hitler, but which was systematically developed by his government. There are fine ideas in it, but it has been made distasteful to the people by over-organisation, self-praise, and the intrusion of political propaganda. Those who contribute to this Winter-relief Fund have as little right to take part in or to control its distribution as they have in regard to the innumerable compulsory street-collections.[2]

When a detachment of the Storm Troopers or the Black Guards parades the streets, every citizen must give the Hitler salute. Anyone who tries to avoid this duty, for instance, by turning into a side-street, risks arrest by an observation-detachment.

Houses must only be decorated with flags at the appointed hours. In this, too much zeal is as dangerous as too little, and may lead to the infringements of decrees for the " protection " of the national emblem.[3]

It is easy to understand that to print portraits of the Führer, and the national emblem, on handkerchiefs, paper table-napkins, and toilet paper, is forbidden. It is less comprehensible, however, that people should be forbidden, under penalty of a fine, to sing the national anthem or the Horst-Wessel song in places of amusement and in cafés or

[1] Law of 1st December 1936 and Statutes of 24th March 1937.
[2] See p. 164.
[3] Law of 19th May 1933 and Administrative Decree of 23rd March 1933.

restaurants,[1] unless the local police have given special permission, which must be applied for with twenty-four hours notice.

Similarly no new words may be set to the melodies of the Nazi battle-songs. The Reich Minister of Ecclesiastical Affairs has made the same regulation for matter under his purview.[2] According to this, for example, it would be forbidden to sing the English hymn " Glorious things of thee are spoken, Zion, city of our God " because it is set to the same tune as the German national anthem.

The object of the decree for the " protection " of national battle-songs is apparently to make people forget that these are mostly imitations of Marxist originals.

Germans living abroad, also, are fettered by the new occupational and social code of life, for here the foreign organisation steps in.[3] Every German staying longer than three months in a foreign country must report to the appropriate German consulate [4] unless he is prepared to run the risk of losing his citizenship—a risk that also threatens any German citizen who is " disloyal to the Reich and the people," or who disobeys an order of the Minister of the Interior to return to Germany.[5]

Deprivation of citizenship is effected by decree of the Minister of the Interior. He has absolute discretion to extend the decree to cover the wife, and children if minors, and to declare any property they possess in Germany forfeited to the State.[6] No person who has been deprived of citizenship may acquire property by way of bequest or by the gift of a citizen of the Reich.[7]

Deprivation takes effect on publication of the decree in the Reich or the Prussian Official Gazette. In the procedure for deprivation of citizenship the person concerned is not heard. If the Propaganda Minister omits to publish the

[1] Prussian Police Order of 18th August 1933.

[2] Edict of 28th August 1936, printed in Frank-Haidn-Fischer (see *n.* 4, p. 163), *op. cit.* p. 240.

[3] See p. 186.

[4] Law of 3rd February 1938.

[5] Law of 14th July 1933.

[6] See p. 215.

[7] Law of 5th November 1937.

decree of deprivation in the daily Press, a person may have ceased to be a German citizen for a long time without his knowledge, since the Official Gazette is not one of the commonly read daily papers. That happened to myself; but since not only my wife but also my three sons shared my fate, I was not unduly perturbed, for thus there will be no need for conscientious scruples when they reach the age at which they would be liable for labour service and military duty.

The order forbidding all Germans to belong to international associations such as Masonic lodges, Rotary clubs, etc., serves also to keep them from the taint of foreign influence, even those that are merely of a social nature. Even the German section of the International Association for the Investigation of Crime and the German Criminal Law Society were dissolved and substituted by the Society for German Criminal Law, the chairman of which is nominated by the leader of the legal profession. It is left to him to take such steps as he may think proper for getting into touch with foreign countries.[1]

It has been noticed that Germans abroad, who either intend to return home in the near future or are cautious in expressing their opinions for fear of reprisals on relatives or friends in Germany, either praise the new régime or refrain altogether from discussing it. Foreigners in Germany notice the same thing. Few foreigners realise the true attitude of the people, or are in a position to distinguish between appearance and reality. The stress of life and the longing for a little happiness cause most of them, in public at least, to play for the safety of both themselves and their families. They never betray their true opinions: soon, perhaps they themselves will not know them. That, of course, is what the Nazis are aiming at. But occasionally the scales fall from their eyes. One man, who can live undisturbed in Germany and make a good income, suddenly decides to go abroad, to escape for a few days from the all-pervading hypocrisy evidenced

[1] *Law Weekly*, 1937, p. 3211.

each morning by the postman's " Heil, Hitler." Another man had to go abroad on business. He had no desire to speak other than favourably about conditions in Germany ; but he realised the true state of affairs, so far as this was possible, in view of his long experience of the lack of reliable news, and then suddenly the flood-gates opened. Even official communications from foreign governments and statesmen to Germany are not published at all, or they are published belatedly and in a carefully edited version. One incident made a deep impression on me. Two brothers I knew, who were enthusiastic Nazis, had been abroad for some months. I avoided meeting them or holding any communication with them. When the crisis of September 1938 was at its peak, we met accidentally, and they made a rush at me. They sharply criticised the Führer, said that his attitude, which brought the danger of war so near, was inexcusable, and swore that nothing would make them go home and fight. Their enthusiasm had suddenly been converted into panic. If the truth had been known in Germany, many people would have been similarly affected, though large numbers would no doubt have remained loyal to the Führer. We may wonder whether it would have been possible to effect such a conversion *en masse*. Many persons shut their eyes and ears to the truth because they fear that spiritually they would not be able to bear it.

But that incident, by no means an isolated one, strengthened my conviction that the stability of a political régime is put to the test when its policy is threatened with failure.

(*h*) " *Collective Action* " :

In their passion for giving their innovations the appearance of ancient and long-forgotten traditions, the Nazis have hit on the idea of the medieval *Reichsacht* (ban of the Empire). The man on whom the *Aberacht* (repeated ban) fell was held to be outlawed. No one might admit him into his house, give him food or drink, or assist him in any way. He was completely outside the law and could never

obtain redress for injury done to him. Moreover, he was excommunicated by the Church, and so robbed of spiritual peace. Nobody had dreamt that such conditions, which were in force in the dark ages, could ever return : surely the human spirit had by its age-long struggles won its way to freedom !

The new Germany has shown us that we were mistaken. Without even the formality of a decree, it imposes its ban on individuals, or on whole communities. For this purpose it makes use of the regulations of occupational and social bodies, or where necessary of an " educational " course in a concentration camp.

Thus, for example, a detachment of Storm Troopers, masquerading as an " infuriated mob," smashes one of these unfortunate person's windows. His employer receives from his federation instructions to dismiss him on account of " national unreliability." If the person in question is a professional man in practice on his own account, he is deprived of it by a court of honour or by an administrative order, or he is so discredited that he cannot carry on. If he owns a business, he must " sell " it. His wife can divorce him without difficulty, since he alone is the " guilty " party, and she cannot be expected to remain married to an " enemy of the State." He is deprived, by the Court that deals with the guardianship of wards, of parental authority over his children, lest their education in the " right spirit " should suffer. In this way he is pitilessly persecuted by the " heroic " collective action of the leaders of the various organisations. He must submit himself to the yoke, must " grunt and sweat under a weary life "—unless, like so many of his fellow-sufferers, he puts an end to it by his own hand.

E. The New Criminal Law

(*a*) *Its Relation to Actual Crime :*

The new German criminal law means something very

different from criminal law as commonly understood. The purpose of the latter is to protect society from the professional criminal and to give those who have fallen into evil ways through poverty, passion or temptation a chance to return to an honest life by expiation of their misdeeds. But the former has created a new type of criminal—the traitor to the People. Such are those who by word or deed oppose Hitler's ideology.[1] For " the makers of the new criminal law were careful to see that it was based on the Führer's code for the life of the German people." [2] The traitor to the nation is a " sub-man," who is simply to be wiped out as a " being of a different species." [3] National Socialism, in accordance with its " heroic " attitude to life, intends its criminal law to be used not only for the expiation of crime, but also, after the example of the soldier in battle, for the extermination of the perpetrator as representing the anarchical principle.[4] By this means the criminal law becomes an " apparatus for the self-purgation " of the nation's body and strengthens the " fighting spirit that imbues the sound and healthy nucleus of the people." [4]

And those who have no thought of committing a crime as commonly understood are stigmatised as criminals simply because deeds that were formerly not regarded as even wrong—still less as criminal—have, by the influence of this spirit, been classed as " crimes." On the other hand, there are criminal acts that, because they accord with the prevailing ideology, are either not punishable at all, or are automatically pardoned. It is against the new " traitors to the People," rather than against professional criminals, that the new law is directed, and under it the former are dealt with more severely than the latter.

[1] Gürtner-Freisler, *Das neue Strafrecht* (The New Criminal Code), 2nd edition. Dr. Gürtner, p. 24.

[2] Joint explanation by Gürtner, Reich Minister of Justice, and Freisler, State Secretary to the Ministry of Justice, dated 31st October 1936, *op. cit. n.* 2, p. 3.

[3] Rosenberg, *op. cit.* p. 580.

[4] Freisler, *op. cit.* (see *n.* 1, p. 159), pp. 14–18.

Statistics show that the total number of professional criminals in Germany before the war was approximately 8454.[1] Experience indicated that on an average every professional criminal received one to one and a half years penal servitude, and that after release he resumed his criminal career, thereby incurring a fresh sentence at least every two years.[1] It was observed that the increase in recidivism was in proportion to the increase in convictions.[2] Eminent experts in criminal law held the opinion that the practice of the courts was too mild, and that professional criminals, after a certain number of convictions, should be sentenced to " preventive imprisonment " for life in special prisons, which would do away with most of the dangerous and costly work of the criminal police.[3]

Dangerous habitual criminals are now sentenced after the second conviction to anything from five to fifteen years penal servitude, and to preventive imprisonment for an indefinite period,[4] which may, therefore, be for life. This should not be confused with " protective custody " by the Gestapo. The court re-examines each case every three years to decide whether its object has been achieved.[4] Although these regulations are said to be rigorously applied, the work of the criminal police has been considerably increased. The Gestapo does its work in collaboration with or in authority over them. Although the number of professional criminals may have grown as a result of the War and its aftermath, that does not explain the enormous increase in police activity, which is the result of the change in both the aim and the scope of the criminal law. It is often said that the subordination of the ordinary duties of the police to political interests has made the prevention of real crime more difficult. It is significant of the change that the officials of the police and detective service are no longer

[1] Dr. Robert Heindl, *Der Berufsverbrecher* (The Professional Criminal), 1927, p. 191.

[2] Heindl, p. 383.

[3] *Ibid.*, pp. 194, 195, 317, 318, 327.

[4] Paragraphs 20A and 42F of the Reich Penal Code, added by the Law of 24th November 1933.

only auxiliary to the Public Prosecutor,[1] for they have attained far greater importance than that.[2] The police are no longer an instrument of justice ; justice is now the instrument of the police. The Gestapo does not leave to the public prosecutor's department the entire investigation of crime, but deals by itself with many cases in its concentration camps, where men and women are kept for years without hope of release and without a fair trial. In certain circumstances, where members of the Party are concerned, the Party exercises jurisdiction instead of the regular courts. After serving a sentence imposed by the regular courts, a convict is often placed for a considerable time in protective custody—an additional sentence imposed by the Gestapo and carried out in a concentration camp with a view to " education."

That the criminal law may be a mirror in which a government may read the result of economic or social wrongs is a theory that is alien to Nazi ideology ; for the notion that hunger and despair can drive people to commit offences that are more truly an indictment of their causes than of the perpetrators, does not fit in with the militaristic heroics of Nazidom, which are paramount in criminal law as in all else.

To the true Nazi all crime is a breach of faith towards the Führer. The Reich Law Office of the Party was, therefore, quite consistent in recommending that the criminal law should be based entirely upon the notion of disloyalty, it being axiomatic that a man or woman guilty of it is devoid of all honour ; and that only certain minor offences, amounting in effect to no more than disobedience, should not involve loss of honour.[3] The Official Criminal Law Commission feared, however, that by thus generalising and limiting the basis of punishment the conception of loyalty would be " levelled down." It, therefore, decided to retain the system of designating and defining individual crimes and

[1] Paragraph 152 of the Law concerning the constitution of Courts.
[2] Freisler, *op. cit.*, p. 65.
[3] *Ibid.*, *op. cit.* pp. 46, 47.

criminals, and not to include them under the general heading of "disloyalty." [1]

(*b*) *New Crimes, Severer Penalties, Custody before Trial and the Execution of Sentences:*

So Nazi justice was obliged to create an enormous number of new crimes, to widen the definition of existing ones, and, in particular, to increase very considerably the penalties and their consequences. Thus arose an enormous addition to the number of actions regarded as treasonable, which are punishable with death or severe penalties.[2] Treason includes the communication of a State secret not only to a foreign government or its agents but to any other person.[3] State secrets include documents, drawings, facts, actions and information regarding them which must be kept secret in the interests of the country generally, and not only of its defence.[3] These new conceptions provide the required legal grounds for including, for political purposes, transactions of every kind under the heading of treason. The Government may, "for the good of the Reich," treat as secret even matters that in themselves are not of a secret nature, and prohibit discussion of them as treason. For that the penalty is death, though if the deed involves no danger to the Reich, the sentence may, but need not necessarily, be commuted to penal servitude for life or for a shorter period.

I cannot give instances here, because the cases were "secret," and, in any event to do so might endanger the lives of people in Germany. But I will endeavour to illustrate the case by a legal comparison.

The Constitution of the United States of America [4] regards as treason only incitement to war against the nation or communication with its enemies in such a way as to assist them or promote their interests. No one can

[1] Freisler, *op. cit.* p. 48.

[2] Paragraphs 80–93A of the Reich Penal Code contained in the Law of 24th April 1934.

[3] Paragraph 88 of the Reich Penal Code.

[4] Article III. Section 3.

be found guilty of this crime without the evidence of two witnesses concerning one and the same notorious act,[1] or unless the accused confesses during a public sitting of the court.

As contrasted with that consider the following (incomplete) list of actions that the Nazis hold to be treasonable :

(1) Treason against the sovereignty of the Reich.
(2) Treason against the code of life of the German people.
(3) Treason against the Führer of the German people.
(4) Incitement to treason.
(5) Preparation for treason.
(6) Careless dissemination of treasonable literature.
(7) Betrayal of State secrets.
(8) Treasonable espionage of State secrets.
(9) Betrayal and espionage of false and forged State secrets.
(10) Treasonable forgery of State secrets.
(11) Incitement to betray secrets.
(12) Formation of treasonable connections.
(13) Treasonably bringing about risk of war.
(14) Treasonable armed assistance.
(15) Treasonably assisting the enemy.
(16) Treasonable disloyalty.
(17) Treasonable destruction of evidence.
(18) Treasonable subornation.
(19) Treachery towards a fellow-countryman.
(20) Treasonable alienation of the people.
(21) Conduct indirectly leading to the risk of war.
(22) Incitement to treasonable actions.
(23) Disobedience to official orders in the Foreign Service.[2]

A German citizen or a foreigner who talks incautiously

[1] Legal term for an act that is not disputed, though it remains to be proved who committed it.

[2] Freisler, *op. cit.* pp. 118–19; Nagler, *op. cit.* p. 78 ff.; Thierack, *op. cit.* p. 83.

runs the risk of being punished if not for treason, at least for an offence against the law concerning malicious and mischievous attitude towards and actions against State and Party, etc.[1] According to that law untruthful or grossly distorted statements, which might seriously injure the welfare of the Reich, or the authority of the government, the Party, or its affiliated bodies, are punishable with imprisonment, unless more severe penalties have been incurred under other decrees. The same applies to "remarks about leading persons of the State, Party or Association,[2] made out of spite or for the purpose of incitement to agitation, or such as indicate mental turpitude on the part of the speaker, and tend to undermine the confidence of the people in their political leaders." By this law all criticism is silenced. Even a general observation, without reference to any particular detail, concerning these persons and institutions, is sufficient to render the speaker liable to punishment.

In certain circumstances the prosecution takes place merely on the instructions of the Minister of Justice or of the Führer's deputy. Here again, therefore, there is no legal guarantee of uniform treatment of all cases. It is within the discretion of the government to say whether or not a prosecution shall take place.

These "criminal" laws in particular have brought endless sorrow into entirely respectable families of every class, and have bred a race of spies and informers. Discontented or malicious servants or office employees report incautious remarks made by their employers. In a few cases, even, remarks made about their parents by children demoralised by the teachings of the Hitler Youth have led to the break-up of families. Many times have I been asked by the victims to act for them.

[1] Law concerning malicious and mischievous attitude towards and actions against State and Party, and for the protection of the Party uniform, dated 20th December 1934, with Administrative Decrees of 15th February, 22nd February and 16th March 1935.

[2] *E.g.* the Reich Air Defence Association and the Organisation for the Maintenance of Supplies.

The following cases in which I acted are good examples of the way in which trivialities are magnified into crimes.

A very respectable mechanic who had his own workshop told a customer that he had been to a cinema, and that it had struck him that people applauded far less when Hitler appeared on the screen than formerly. The man, who had never been in trouble, was sent to prison for a year. The effect on him was not that he repented but that he was embittered.

A retired officer employed in a large industrial undertaking, was having a drink with two "friends." They chatted, amicably enough, and the beer unloosed their usually discreet tongues. The ex-officer was subsequently charged with having made the following remarks: "The new government's policy with regard to foreign exchange will lead to catastrophe. It all comes of Hitler's continual interference in the Minister of Economics' planning. And I know that in other ways there are divisions inside the government that will lead to a smash." The ex-officer is alleged to have mentioned by name two Ministers who loathed each other, and to have added that the wife of one of them came from Frankfort, where her father had been the editor of a Jewish paper. One of the two friends, a garrulous person, had innocently told a third person about this. The latter pricked up his ears, explained that he was a convinced National Socialist, and laid an information.

Normally, when a man appears in court for the first time, very careful inquiries are made about him and his reputation. This is now done by the Nazi officials in charge of the respective businesses, and by the political organisations. The reports in such cases read something like this: "The accused person still holds Marxist-Liberal views, and deserves the severest punishment." No reasons are given, although it is at least highly improbable that a former Prussian officer would be a Liberal, let alone a Marxist.

The unfortunate man was told by his chief that if he were convicted he would have to be dismissed. But my client's troubles were mitigated by a stroke of luck.

One of the witnesses for the prosecution died; the second became confused under cross-examination, doubtless through shame at the way he had acted after the conversation over their drink; and the third—the man to whom the latter had told the story—had suddenly fallen into disgrace owing to talk of embezzlements in one of the Party offices. In these circumstances the preposterous business was settled after some weeks of turmoil. My client was heavily fined, the money going into one of the Party coffers, and the Party withdrew the prosecution. Otherwise he would have certainly been sentenced to a long term of imprisonment.

From that moment, however, my client has been an enthusiastic Nazi, and always wears a brown shirt. I am not sure whether his real views are coloured to that fashionable hue, but I heard later of strange things he had done, no doubt with the intention of proving his Nazi convictions. Nor can I say that I was surprised, for I have known the same thing to happen in other cases. Whether this is a true "change of heart," or, as I believe, hypocrisy, it is at any rate a typical case of what becomes of those upon whom falls the full weight of the new criminal law and of Nazi "education."

My client was lucky to have escaped arrest, for the Gestapo might have taken him into protective custody, or a legal warrant might have been issued for his apprehension. The latter could formerly only be issued in case of strong suspicion not merely of guilt but also of intention to destroy evidence or tamper with witnesses, or to fly the country. It can now be issued [1] on the ground that the accused may use his freedom to commit further crimes, or that the seriousness of the crime and the popular demonstration

[1] Paragraph 112 of the Criminal Procedure Code, contained in the Law of 28th June 1935, in force since 1st September 1935.

it has given rise to, make it impossible to allow him to remain at liberty.[1]

The "popular demonstrations" are easily staged. The usual Storm Troopers' detachment are ordered to put on civilian dress—and the "people's will" is carried into effect by "administration of justice."

The Ministry of Justice declares that criminal procedure must be liberated from the fetters of the "liberal, bourgeois, Magna-Charta ideal," and that the institutions of the State can be trusted to act justly.[2]

The extension of the principle of remand in custody, which with minor variations is to be retained in the projected law concerning criminal procedure,[3] brings it into line with protective arrest by the Gestapo. The two may overlap. In theory there is one difference, *viz.* that under the rules of criminal procedure a complaint may be lodged against a judicial warrant of arrest.

The law against malicious attitude, etc., makes it a punishable offence, among other things, to possess or to wear without authority the uniforms and badges of the Party or its affiliated bodies, the penalty being especially severe if they are worn during the commission of a criminal offence. In this connection the Nazi jurists have racked their brains to determine whether, for example, a Black Guard offends against the law if he owns a Storm Troopers' uniform—a question that they have decided in the negative.[4] But they have decided it in the affirmative in the case of a member of the Nazi *Rechtswahrer* Federation who is not a member of the Party.

Publicly insulting or maliciously and deliberately bringing into contempt the Reich, the Army, Navy, or Air Force, the Party or its affiliated bodies, the Colours,

[1] See *n.* 1, p. 265.

[2] Freisler, *op. cit.* p. 135.

[3] Ministerialrat Dörffler (see *n.* 1, p. 66), *op. cit.* p. 268, and Report on replies to questionnaire addressed to the supreme provincial judicial authorities, *ibid.* App. p. 594.

[4] Frank-Haidn-Fischer (see *n.* 4, p. 163), *op. cit.* p. 166 *n.* 15.

the emblem of sovereignty, or the various emblems of distinction, is punishable with imprisonment.[1]

Among the decrees issued as a result of the re-introduction of conscription and of re-armament, one has acquired special importance. This provides that a person who manufactures or sells weapons of defence knowing them to be defective [2] shall be punished with imprisonment, or in especially serious cases, with death or penal servitude for life. This has been the fate of many German workmen who have failed to do their best owing to discontent with their social status.

The increase in the number of capital offences marks the realisation of the Nazi will towards destruction. The death sentence is so often passed and carried out that the provisions [3] for its execution have been altered. Formerly two members of the court had to be present, and the municipal corporation of the town in which the execution was to take place were required to arrange for twelve inhabitants to be present. The presence of these persons is no longer required. The authorities fear that judges are reluctant to pass the death sentence if they witness the execution, and that the courage with which their political opponents go to the scaffold would become generally known through the twelve witnesses of the execution.

Under the prospective criminal law more than twenty offences [4] are treated as capital crimes, most of which, indeed, were already so under laws decreed since the beginning of the régime. The Official Commission on Criminal Law [5] has considered prescribing different forms of capital punishment "according to the ancient German conception of justice," *i.e.* beheading in normal

[1] Paragraphs 134A and B of the Reich Penal Code, added by the Law of 28th June 1935.

[2] Paragraph 143A of the Reich Penal Code included in the Laws of 28th June 1935 and 2nd July 1936.

[3] Paragraph 454 of the Reich Penal Code included in the Law of 28th June 1935, in force since 1st September 1935.

[4] Freisler, *op. cit.* p. 112.

[5] Ministerialrat Rietzsch (see *n.* 1, p. 258), *op. cit.* pp. 122, 123.

cases, hanging in specially outrageous cases and shooting in those not involving "dishonour." The Commission considered that in exceptional cases the condemned man might be given a revolver or a poisoned drink, and allowed to execute the sentence on himself. So far as can be ascertained, however, one form of execution is adhered to.

That sentences involving deprivation of liberty are more rigorous than before is clear from the provision [1] that persons sentenced to imprisonment may be employed on work outside the prison, especially on public works or on those supervised by a State authority, provided that they are kept apart from free workers. This decree applies also to persons who were sentenced before it came into force.

Formerly this provision was applicable only to those sentenced to penal servitude. It seems far too severe to be applied in a case of ordinary imprisonment, since it also affects first offenders. But it is entirely unjust to apply it to those sentenced under the law as it originally stood. It has caused a great deal of unnecessary distress, and it has deeply wounded the prisoners' sense of honour. I know from my own experience as counsel, alas, that it is useless to attempt to have the provision altered.

The Nazis wanted to replace the old criminal law by the new "at one stroke," but in this they were not successful. Such a process requires years of preparation. Hence laws have been decreed amending the old criminal law and procedure, in addition to special laws to meet the political needs of the day, which have since been made permanent. The chief of these we have already discussed. Such of the new criminal laws as have not yet been actually decreed have been made known to the judges through the reports of the official Commission on Criminal Law and Procedure. The judges are doing what is expected of them, for they have already started to "adjust" their decisions in accordance with the prospective law.

[1] Article XIV. of the Law of 24th April 1934.

(*c*) *Law of Criminal Intent and Attempted Crime :*

The new criminal law is a " law of criminal intent," which means that it looks for its grounds of action first of all to the perpetrator's will to commit a crime and his preparation for doing so, and not to the result of his action. But to try to detect this will in the brain of a man planning a crime would merely be to grope in the void, and the law regards the curbing of " man's unfettered thoughts " as a job for the " positive education of the people " ; [1] and so it confines itself to the punishment of the will when manifested in action.[2]

Anyone, therefore, who merely plays with the thought of crime is not yet a criminal, even under Nazi criminal law. But as he allows his thoughts to play with crime, the *temptation* grows stronger and stronger until it gives birth to a *resolve* to do the deed. Now begins the *preparation* for the crime, which is succeeded by its *commission* ; all of which is aimed at the achievement of the desired *result*.[3] If this result follows, then the crime is *completed*, otherwise it is only *attempted*. One reason why the commission of a crime does not always lead to the desired result may be that the perpetrator has not done everything necessary to carry it out, whether this be due to sudden compunction or to detection. It may also happen, however, that though the perpetrator has completed the crime, the result has not been attained because he used unsuitable means, or exerted his ingenuity on an unsuitable object. Both alternatives may be present simultaneously ; as, for example, if a woman erroneously believes herself to be pregnant and attempts to procure a miscarriage by drinking hot lemonade.

Under German criminal law, attempted crime has always been punished, but an attempted misdemeanour only in certain specified cases ; in both, the punishment

[1] Freisler (see *n.* 1, p. 258), *op. cit.* p. 137.
[2] *Ibid.* (see *n.* 4, p. 258), *op. cit.* pp. 31, 33.
[3] *Ibid.* (see *n.* 4, p. 258), *op. cit.* p. 21.

was milder than that inflicted for an offence actually committed.[1]

The criminal law of the future holds that this confuses, so to speak, the " dressing-station " with the " front line," and sees in it the " surrender of a frontier province to a weak enemy without a struggle "—an action unworthy of the " Commander-in-Chief of a powerful State." [2] The " front line " should be placed so far forward that the culprit will be caught in the " barbed-wire entanglement " of the State's criminal laws the moment he begins to carry his will into effect. Then the " keen avenging sword " shall fall on and demolish him.

Military metaphors apart, the principle here laid down is that in future all crimes without exception ought to be punished even if they are carried no further than the attempt, and punished as severely as if they had been completed. The general decrees covering this have not been issued, though this principle has been followed in cases dealing with offences that various decrees supplementary to the existing criminal law have declared to be " crimes." [3]

In practice, however, the new tendency is asserting itself in that all offences committed with unsuitable means or against unsuitable objects are treated as attempted crimes and punished accordingly.[4] Thereby many acts of preparation, hitherto exempt from punishment, as being too remote, become punishable as being sufficiently proximate to the commission of the offence.

The Supreme Court of Appeal (*Reichsgericht*) had already begun to adopt those principles in the administration of justice that the Nazis have later striven to follow ; but, faced with objections—both theoretical and practical—it was driven to make reservations. So the Court refused to punish for attempted murder a person who had prayed for

[1] Paragraphs 43 and 44 of the Reich Penal Code.
[2] Freisler (see *n.* 4, p. 258), *op. cit.*, pp. 20, 24.
[3] See, *e.g.* p. 283.
[4] Freisler (see *n.* 4, p. 258), *op. cit.*, p. 35.

the death of another. It pointed out that this decision in no way infringed its former interpretation of the law, but that on the contrary it upheld it in principle, since to try and kill anyone by praying for his death was sheer superstition, and could never be a source of danger. It is difficult to see why this should not hold good in the case of a woman who drinks hot lemonade, whether or no she is in fact pregnant.

Under the influence of the new tendency, the Supreme Court, in its administration of justice, is now evidently going the whole hog, and deciding that such imaginary crimes are in future to be punished as if they were real ones. This is clear from its finding that a man who mistakenly believed himself to be a Jew and had sexual intercourse with a " pure-blooded " German woman, should be punished—for attempted racial pollution ! [1]

The fight for German racial purity seems also to have given rise to a little confused thinking upon the distinction between the *preparation* for and the *commission* of crime. Thus, the Supreme Court punished a Jew for attempted racial pollution merely because he had been found alone in a room with a woman of " German blood." [2]

Another result of the feverish anxiety to punish criminal intent is that the State Criminal Law Commission came near to treating psychopaths as normal people. They are usually punished less severely, since their inhibitions and their power of distinguishing between right and wrong are less highly developed. In the view of the Criminal Law Commission, however, they constitute a greater danger than normal people, and must therefore be required to put forth special efforts and summon up every ounce of will-power to counteract their disability and overcome their criminal tendencies. Thus they will obey the universal maxim : " You must, therefore you can ! " [3]

[1] Judgment of the 2nd Criminal Senate of 3rd March 1938, *Law Weekly*, 1938, p. 1105, *n.* 2.

[2] Judgment of the 3rd Criminal Senate of 5th September 1938, *Law Weekly*, 1938, p. 2807.

[3] Ministerial Director Ernst Schäfer (see *n.* 4, p. 258), *op. cit.* p. 53.

(*d*) *Retrospective Legislation and Analogy :*

In their efforts to bring all guilty persons within the net of the new criminal law, and to punish them with the utmost severity, its authors have introduced the principle of "analogy," [1] and have issued laws with retrospective force.[2]

In both theory and practice every criminal law of every nation, probably, consists of a command or a prohibition, and contains a penalty clause. The State may omit the penalty clause on the assumption that its command or prohibition will suffice to ensure obedience. If this assumption proves incorrect, it can insert the penalty clause subsequently ; and in theory this is, indeed, permissible with retrospective effect not merely to the time when the command or prohibition was promulgated without the penalty clause, but to the moment, before any such statutory regulations at all were in force, when the community first recognised the acts in question as obligatory or forbidden. Laws, after all, only reflect the views of the community on whose behalf they are made, and these views are therefore held before the respective law is promulgated. But it is often difficult to ascertain the moment when they are first held ; and so, to avert the possibility of arbitrary action, which would appear to be possible when the penalty clause in respect of certain specific acts is not promulgated until after the command or prohibition, most States (including Prussia before 1871, the German Empire and the Weimar Republic) followed the example of England, America and later France, and adopted the principle that the penalty should be proclaimed at the same time as the command or prohibition. The need to influence the minds of the people by providing for penalties, and at the same time

[1] Paragraph 2, Reich Criminal Code, included in the Law of 28th June 1935.

[2] See *n.* 5, p. 209; *n.* 1, p. 233 ; p. 273 ; Law of 22nd June 1936 against the kidnapping of children for the extortion of money. Hitler's revocation of the amnesties granted by the former Head of the Austrian State is also of the nature of retrospective legislation. See *n.* 3, p. 138.

guaranteeing immunity from the arbitrary exercise of power, led to the establishment of the principle that no action may entail punishment unless the penalty had been laid down by law before the action was committed—*nulla poena sine lege*. That excludes the principle of analogy and retrospective effect in criminal law.

This principle was enunciated in the former German criminal code [1] and was restated in the Weimar Constitution [2] in order that it should not be amended save by the specified majority necessary for the amendment of the Constitution. The wording of this restatement, however, varied from that of the criminal code in that the latter required for a verdict of guilty that the *Strafe* (actual penalty) must have been laid down by law before the act was committed, whereas the Constitution only required that the *Strafbarkeit* (the fact that a penalty might be inflicted) must have been similarly laid down.

At the trial for the burning of the Reichstag the alteration of this single word cost the Dutchman van der Lubbe his life.

He was accused of having set the Reichstag on fire with the intention of starting a revolt under its cover. At the time of the fire the penalty for this was penal servitude for not less than ten years or for life.[3] By the decree of 28th February 1933, which came into force on the same day, the death-penalty was substituted for penal servitude for life. By the law of 29th March 1933 it was provided that the death-penalty was to apply retrospectively to acts committed in the period between 31st January and 28th February 1933.

Since 1922 the Supreme Court has invariably assumed in arriving at its judicial decisions [4] that the Constitution has amended the criminal code to the extent that a *penalty* must have been laid down by law at the time the act was

[1] Paragraph 2 of the original code. [2] Article 116.

[3] Paragraph 307 of the Reich Criminal Code.

[4] Collected in the *Leipziger Kommentar zum Reichsstrafgesetzbuch*, 5th edn. 1933, vol. i. p. 205.

committed, but that it may later be increased with retrospective effect.

When, therefore, the Court, basing itself on the law of 29th March 1933, condemned van der Lubbe to death, it was only following its former practice, and to that extent it cannot properly be accused of judicial murder. It was the business of the professional guardians of the constitution to see that the discrepancy in the wording was corrected. It was clearly not intended that the Constitution should in this respect be substantially different from the criminal code. But words are kittle cattle.

If the view, held by many legal experts, is correct, *viz.* that the criminal code was not amended by the Constitution, then van der Lubbe should not have been condemned to death. I cannot understand how Lobe, the former President of the Senate of the Supreme Court, can take this view and yet approve the death-sentence,[1] because the Enabling Law [2] authorised the government to depart from the terms of the Constitution in framing their laws. But the Enabling Law gave the government authority to alter the Constitution only in respect of the period after it had come into force, and therefore cannot possibly be applied to the preceding period.

Under the new criminal code the laws are not made retrospective even when they provide for increased penalties. Whether there is a penalty attaching, and if so what, depends in principle on the law in force at the time when the act was committed.[3] But since law has a different meaning to the Nazis than it has to other people,[4] and does not bind the legislator, the latter considers himself entitled, in appropriate cases, to issue decrees with retrospective [5] effect, and has repeatedly [6] done so. No general provision

[1] (See *n.* 2, p. 159), *op. cit.* p. 212.
[2] Of 24th March 1933, and see p. 164.
[3] Paragraph 2a of the Reich Criminal Code included in the Law of 28th June 1935.
[4] See pp. 132–4, 137.
[5] Oberlandesgerichtsrat Karl Schäfer (see *n.* 1, p. 159), *op. cit.* pp. 208–9.
[6] See *n.* 2, p. 272.

for the retrospective effect of increases in penalty in the future has been made, simply because it might create difficulties with foreign countries on the question of extradition.

The Nazis counter the maxim, *nulla poena sine lege*, with their own : *nullum crimen sine poena*—no crime without punishment.

It was after the following case that the Nazis desired to introduce the principle of analogy into legal procedure :

Two men used a number of two-pfennig pieces that they had flattened out to the dimensions of ten-pfennig pieces to obtain telephonic connection in public call-boxes. In some cases the instruments were automatic, in others the men had to call up the Exchange to get through to the numbers they wanted. The Supreme Court [1] decided that only in the latter case could fraud be established, since in an entirely mechanical service, connection is not made by a servant of the Post Office under the erroneous belief that the prescribed ten pfennigs have been paid. Nor could a penalty be inflicted for misappropriation of electrical power from the telephone installation, because the coins put into the slit did not act as conductors for the transmission of electric current, but only released an obstruction that prevented the number-plate from being turned. It may at once be granted to the Nazis that the use of a call-box with a slot apparatus without payment of the prescribed charge should be subject to the same penalty in whatever way it is done. At the time the laws applicable to this case were passed the technical progress of the telephone service was not foreseen. The legislature was to blame for not bringing the law up to date to meet the new conditions due to that progress, as and when they arose. The judge's place in the constitutional system gave him no authority to meet those new conditions. In the eyes of the law, certainty came before chance—the possibility that one day an offence might be committed for which no penalty was provided by statute. The Nazis reverse this thesis and hold

[1] *Law Weekly*, 1934, p. 1241, No. 11.

it to be intolerable that in a totalitarian State a single evil-doer should slip through the meshes of the law. It is, moreover, very seldom that the perpetrator realises the existence of such subtle legal distinctions ; and the two men in this case certainly did not care whether or not there were technical differences between one telephone and another.

Lacunæ in the criminal law are avoidable if the judge is allowed to dispense justice freely. By doing this his position approximates to that of the legislature. But this would be incompatible with his subjection to the will of the Führer. The Nazis have accordingly chosen a middle course. They declare that persons should also be punished for acts for which no specific penalties are provided by law, but for which punishment is demanded by the " fundamental ideas of criminal law and the sound instinct of the people." [1] It is left to the judge to interpret the law, and he must decide, on the merits of each case, whether this provision should be applied. To this extent the judge may be said to possess limited legislative powers.

Experience has shown, during the four years that have passed since this provision came into force, that there are appreciable lacunæ in it, as in others. The following case, one of very many, seems to me to provide conclusive proof of this : [2]

A butter merchant who had a licence to purchase butter was found in possession of seventy-eight pounds of butter that he had bought from various farmers, whose names could not be ascertained.

In Germany the milk trade is subject to compulsory regulation. Under the orders made in connection with the unification of the German Milk Industry, farmers are liable to a penalty if they do not deliver all the milk they produce, except their own household requirements, to certain specified dairies.

[1] Paragraph 2 of the Reich Criminal Code, included in the Law of 28th June 1935.

[2] A comprehensive collection of legal decisions concerning analogy is to be found in *Law Weekly*, 1938, p. 1553.

The public prosecutor held the view that the butter merchant had contravened these orders. He asked that if necessary the case should be dealt with by "analogy." The lower court, however, acquitted him, and the Supreme Court upheld its finding.[1]

The view of the Supreme Court was that the only punishable offence was the failure to deliver the milk, and not the fact that it had been made into butter. As soon as it is churned, milk ceases to be milk, and it is therefore impossible to deliver it as such. A separate offence in regard to the butter was not possible. The existence of the butter was merely proof that the obligation to deliver the milk had not been fulfilled. The farmers would also have been punished for failure to deliver milk if they had delivered the butter to the dairies, instead of selling it to the butter merchant. The purchase of butter from farmers is so customary that the persons who drafted the order could not have overlooked it. Evidently they considered that arrangements for providing every member of the community with an equal share of butter could be made without issuing decrees with penalties for non-compliance. The quantity of butter found in the possession of the accused was not large enough to jeopardise the ration to which the people were entitled. Whether or no there was any real reason to fear that the people's rations were being jeopardised because the farmers generally were in the too frequent habit of selling large quantities of butter, it was not within the competence of the Court to decide. That was a matter for the framers of the order, who alone had access to the necessary statistics and reports of their subordinate agencies. It must therefore be left to them to issue any necessary supplementary orders. No facts had been adduced to show that the accused had instigated the farmers not to deliver their milk, or had aided and abetted them by promising, before the butter had been made, to buy it from them. The Court refused to convict the butter

[1] Judgment of 10th December 1936. *Decisions of the Supreme Court in Criminal Cases*, vol. lxx. pp. 377 *et seq.*

merchant of being an accessory after the fact or a receiver, because he had bought the butter for his own and not for the farmers' benefit. The purpose of an accessory after the fact or a receiver is to conceal another person's offence committed in respect of property that is not their own. The butter had belonged to the farmers. "Receiving" in respect of their own property could not arise, even though its substance had been changed by the commission of an offence. The principle of analogy, therefore, could not apply in the case of the orders in question.

The introduction of analogy into the Nazi system of criminal law, therefore, does not exonerate the persons who make the law from the necessity of amending or adding to it to meet changes due to technical inventions or any other cause. This necessity may be reduced in proportion as the principle of analogy is admitted. But the propriety of its application in individual cases remains doubtful and it may therefore be asked whether it is really worth while permitting this legal uncertainty simply for the sake of avoiding the use of legislative machinery that already grinds out countless rules and regulations for the dragooning of the people. The admission of the principle of analogy tempts the legislator to couch his decrees in vague wording, and to leave them incomplete. The use of analogy certainly increases the opportunities for intimidation, and this it was that turned the scale in favour of its introduction.

Equitable application of the principle of analogy logically requires that it should be employed for as well as against the accused person. The administration of justice as it was formerly effected by the Supreme Court, afforded, as we have seen, excellent opportunities for development of this thesis.[1] But since they came into power the Nazis have consistently refused to apply it.[2] The unwritten law of the "People's Führer-State"—that it is for the will of the Führer alone to decide whether an act committed in self-defence or in an emergency is or is not punishable—will be expressed in the projected criminal code by inclusion

[1] See pp. 156–8. [2] See *ante*, p. 159.

of a provision that such decision must be in accordance with the "sound instinct of the people."

This restricts the judge's freedom of decision. He must express not his own opinion of what is a "sound instinct of the people," but the opinion that the Führer imposes on him. And because he must obey the Führer's orders, it may happen that many pleas of self-defence and emergency that would formerly have been dismissed will now be allowed, and vice versa.

The phrase "sound instinct of the people" is one of those formulas that force the judge not only to classify events by the light of reason, and according to definite rules of law, but to value their ethical worth by the light of his moral sense. It is characteristic of the ideas underlying this latter process that we may call something good or bad from the ethical point of view without being able to describe it in greater detail. These ideas are, moreover, liable to change with the times. To-day perhaps, something may be felt to be "bad" that a hundred years ago was considered "good." In the same way the interpretation of a permanent law may change. The Nazis, however, require not only that the laws shall breathe their spirit, but that they and their interpretation shall for ever be attuned to this "spirit." This purpose is served by the frequent introduction into their descriptions of individual crimes and their rules of conduct, of such expressions as "sound instincts of the people," "turpitude," "malicious or provocative remarks," etc., which are required for the completion of their scale of values. The measures passed by the National Socialist Government provide for the "maintenance by the legislature and the judicature of an ideological and spiritual attitude, and the will to conform." [2] In this way these expressions become binding standards, and are converted from motives that should impel the judge to take account of the currents of popular opinion into fetters imposed on him by the

[1] Freisler (see *n.* 3, p. 103), *op. cit.* p. 59; and (see *n.* 1, p. 159) *op. cit.* p. 81.

Government. Such is justice "in close communion with the people!"

The same "close communion with the people" is evidenced by the spreading of the custom of duelling, which formerly had only been usual in university and army circles. Among students, the *Mensur*, like all sports, is an excellent training, so long as it is not overdone.

To-day the people are encouraged to believe that it has been a characteristic of the Nordic-German man from time immemorial to defend his honour with the sword.[1] The settlement of affairs of honour is the imperative duty not only of officers,[2] but also of members of the Black Guards [3] and Storm Troopers,[4] and so the duel is introduced into circles that formerly had nothing to do with it. Qualification to "give satisfaction" often led to pride of caste and to an overbearing attitude towards men of high principle who objected to duelling on religious grounds. And to this is now added pride of race, which heightens the tension of an already overcharged atmosphere.

(*e*) *The People's Court of Justice and Special Courts:*

As we have already seen in connection with the Thaelmann case,[5] the prosecuting authority in the People's Court is the Public Prosecutor attached to that Court. Since it was made part of the regular judicial system, he has no longer been subordinate to the Chief Prosecutor attached to the Supreme Court of Appeal, but is himself an independent official of the Reich.

The Special Courts have been set up for each district of the Provincial Courts of Appeal, and they deal chiefly with offences against the law[6] concerning malicious attitude,

[1] Freisler (see *n.* 1, p. 159), *op. cit.* p. 110.

[2] Edict of the Chief of the Army Administration of 1st November 1934.

[3] Order concerning the Court of Arbitration and Honour of the Black Guards of 9th November 1935.

[4] Order concerning the Honour of the Storm Troopers of 12th December 1933.

[5] See p. 65.

[6] See *n.* 1, p. 263.

etc., and other similar laws. The Special Court consists of a bench of three qualified judges chosen by the President of the competent District Court from among those employed in the area of the Provincial Court of Appeal.

Latterly the Public Prosecutor has had power to institute a prosecution before the Special Courts for *all* crimes punishable with death, penal servitude, or more than five years' confinement in a fortress, if he considers this requisite owing to the nature of the crime or the public indignation it has roused.[1] But if the People's Court is competent, then the Special Courts are not.[1]

It is desired to expedite the hearing of cases both in the People's Courts and in the Special Courts. The People's Court, with the sanction of the Chief Public Prosecutor, may therefore transfer certain cases of treason to the Senates of the Provincial Courts of Appeal, which are composed of five qualified judges. The Chief Public Prosecutor can, even before this, hand over the prosecution to the Public Prosecutor attached to the Provincial Court of Appeal.

The projected law concerning criminal procedure provides for the amalgamation of the Special Courts and the Senates of the Provincial Courts of Appeal. It is intended that these, like the Senates of the People's Courts,[2] should consist of qualified judges and lay justices, and should act as "Courts for the protection of the people," or Magistrates' Courts.

The findings of the People's Court, the Special Courts, and the Senates of the Provincial Courts of Appeal, become legally valid upon promulgation.

The procedure for the examination of witnesses and experts in politico-criminal trials under the Third Reich would require a chapter to itself. It is the duty of counsel for the defence to test the truth of every statement unfavourable to his client by considering its probability or

[1] Decree concerning extension of competence of Special Courts of 20th November 1938.

[2] Thierack (see *n.* 1, p. 66), *op. cit.* p. 82.

otherwise in accordance with four following hypotheses as laid down by Laplace : [1]

The witness is not lying and is not mistaken.

The witness is not lying, but is mistaken.

The witness is not mistaken, but is lying.

The witness is lying, and is mistaken.

As a result of the inquisitorial activities of the Gestapo, with its use of the " third degree," the first of these hypotheses is no longer practicable. Moreover, fear very often causes witnesses to speak at random ; that is to say, the witness loses all power of distinguishing between the false and the true, and his only desire is to say what he imagines the Gestapo or the Court want him to say.

Questions put by the defence regarding ill-usage are of course ruled out, even if the witness is swathed in bandages.

The Nazis have encouraged these developments by restricting the practice of taking evidence on oath.[2] Whereas formerly every witness had to take the oath unless there was some legal ground for exemption, he is now allowed to give evidence without doing so, provided the Public Prosecutor, the accused, and his counsel all agree to the omission of the oath. The same applies whether the witness is an expert or a layman. It was hoped that all concerned would unite to restrict the administration of the oath, and thus help to prove the axiom that every German citizen speaks the truth in Court.

The Nazis are now trying to re-introduce the practice of taking evidence on oath, since its restriction was found to have resulted in a deterioration in witnesses' regard for the truth.[3] It is only because the order has now gone forth that evidence is normally to be taken on oath, that the proposal made at one time to punish false statements made in Court, but not under oath, has been abandoned.[3]

But the people's conscience has been so dulled by the

[1] Marquis Pierre de Laplace, *Théorie analytique des probabilités*, Paris, 1812; *Essai philosophique sur les probabilités*, Paris, 1814.

[2] Law of 24th November 1933.

[3] Freisler (see *n.* 1, p. 66), *op. cit.* p. 23.

methods employed that there seems little prospect of any real improvement through the re-introduction of the compulsory oath alone.

(*f*) "*Peace through Justice*":

Statistics prove that in Germany judicial punishment is inflicted to a very much greater extent than in any other European country.[1] This fact should cause Nazi jurists to consider whether too much and too severe punishment does not diminish the authority of those that inflict it.

Unfortunately an increase in crime among young persons is also to be observed. In the first six months of 1937 almost as many young persons between the ages of fourteen and eighteen were punished as in the whole of the year 1934.[2] It is true that this does not take into account that the total number of young persons was greater in 1937 than in 1934; but against this must be set off the fact that cases dealt with by the Gestapo, the People's Court, and the Party Courts are not included in these calculations. Brutal crimes and offences against morals [2] form a large proportion of the total number. Sixteen new institutions for young criminals have had to be established.

So we may doubt whether the new "justice" is, after all, in such very "close communion with the people," when we observe the means it adopts for "keeping the peace."

Formerly murder was punished by death, and attempted murder by not less than three years penal servitude.[3] Only an attempt on the life of the Head of the State was punished, as high treason, with death. Under the Third Reich it is considered necessary, among other things, to treat attempted assassination not only of the Head of the State, but also of members of the Governments of the Reich and of the various member countries, or of a Com-

[1] *Monatschrift für Kriminalbiologie und Strafrechtsreform* (Monthly for Criminal Biology and Criminal Law Reform), Munich, No. 6, June 1937, p. 302.

[2] *Das neue Tage-Buch*, periodical, 1938, pp. 9 and 318.

[3] Paragraphs 211 and 44 of the Reich Criminal Code.

missioner of the Reich Government, as a capital offence.[1]

Since the passing of the law "for the guaranteeing of Peace through Justice," [2] the attempted murder from political motives of judges, public prosecutors, police officials, members of the Armed Forces, Storm Troopers, Black Guards, and officials of the Party, is punishable with death, or with penal servitude either for life or not exceeding fifteen years. Attempted murder of a lay magistrate or a juryman for carrying out their duties at a trial, or of a witness or expert on account of evidence given in Court, are similarly punishable.

When the leaders of a nation or a State find it necessary to use such measures to protect judge and jury, counsel and witness, then clearly there is no genuine "peace through justice" but only an enforced judicial pacification. It is significant that under this law, which was to be the pledge of "peace through justice," severe penalties are provided for the importation from foreign countries of literature "dangerous to the State," including articles urging the establishment of new parties or disobedience to the civil or military authorities, and containing "atrocity propaganda."

"Peace through justice," therefore, requires the hermetic sealing of the Reich against the outer world. And seeing that its first line of defence is a barbed-wire entanglement of severe penalties, it is hardly surprising that the system is not allowed to be destroyed by the granting of amnesties. An authority that is really sure of itself can afford to be magnanimous, and by its very magnanimity establish a true "peace through justice."

Since Hindenburg's one-sided amnesty of 21st March 1933 [3] only four Amnesty Laws have been promulgated.[4] Of these the second applied to the Saar District only and the

[1] Paragraph 5 of the Decree of 28th February 1933 included in the Laws of 24th April 1934 and 28th June 1935.

[2] Of 13th October 1933 included in the Law of 24th April 1934.

[3] See p. 149.

[4] Amnesty Laws of 7th August 1934, 28th February 1935 (for the Saar District), 23rd April 1936, and 30th April 1938 (also for Austria), with Administrative Decree of 30th April 1938.

fourth to Austria. With the exception of the second, which was in connection with the agreements concluded with France concerning the return of the Saar District, and which granted exemption from penalties of imprisonment up to three months and, in certain circumstances, up to a year, they all indicate clearly the intention to put the Nazis in a favoured position. The fourth law granted immunity in Austria for crimes ascribable to "excess of zeal" for National Socialist—no longer "National"—ideas, irrespective of the severity of the punishment that would have been incurred, and therefore also of the degree of depravity indicated. The same held good for the first and third laws, except in respect of deliberate offences leading to a person's death, and acts giving evidence of depravity. There were also three other exceptions from the first law. In spite of this, many serious crimes committed by Nazis went unpunished.

The first law exempted those who had not taken part in "the fight for Nazi ideas" in respect of a few minor offences only, and to some extent even this exemption was made conditional upon the offenders not having been actuated by a "disposition hostile to the nation or State." In other cases fines up to Mk.500 and imprisonment up to three months were remitted. In certain circumstances these maxima were increased to Mk.1,000 and six months imprisonment. Under the third and fourth laws, sentences of not more than a month's imprisonment were remitted; and under the fourth, fines and sentences of not more than six months were also remitted if they were for political offences. Further, under the third law, fines and sentences of not more than six months, and under the fourth, sentences of not more than a year were remitted, on condition that the accused did not wilfully commit a further offence within three years. In these laws, particularly the third, the authorities had in mind clergymen who, according to the Nazis, had offended against the "pulpit paragraph" in the quarrel over the Church.[1] The courts had shown

[1] Paragraph 130A of the Reich Criminal Code. And see p. 395.

scruples about inflicting on the clergymen the exemplary penalties that had become customary and that had resulted in making it hardly possible in practice to apply the amnesty laws to non-Nazis. So it was hoped, by this temporary leniency, to produce a good impression on the clergy, but if expedient to return later to the usual severe measures.

No detailed account of the law concerning the exemption of offences against the foreign exchange [1] regulations is necessary, since that decree served its purpose, which was to bring back, without the application of the law against "economic sabotage," the capital sent abroad.[2]

Under the old criminal law, cruelty to animals was punishable, and it was also forbidden to use dogs for hunting down men. The Nazis pride themselves on having given better protection to animals by the issue of a number of new decrees.[3] It is not entirely without reason, therefore, that animals have been said to receive better treatment in Germany than "sub-human" beings, who are hunted down by every available means. A man who cannot honestly profess adherence to the Nazi ideology has no rights, politically or legal: he can know no peace.[4]

On the other hand a man who shows that he holds the right political creed is not deprived of his right to "peace through justice," even if he commits a punishable offence.

For this purpose the Nazi *Rechtswahrer* Federation proposed, in a memorial accompanying a draft decree on criminal procedure, the establishment of a "Board of Reparation." [5] Under this proposal, the verdicts of all criminal courts would become legally valid upon promulgation. Appeal to the regular courts would not be allowed.[5] The Party would nominate the "Board of Reparation," which would consist of lawyers and of members of the Party and its affiliated bodies. Its object

[1] Of 15th December 1936, with three Administrative Decrees.

[2] See *n.* 2, p. 95; *n.* 1, p. 96.

[3] Laws of 21st April 1933, 26th May 1933, 24th November 1933. Decrees of 14th November 1934 and 20th June 1934.

[4] See p. 256.

[5] Freisler (see *n.* 1, p. 66), *op. cit.* pp. 35–7.

would be to declare a verdict invalid if according to the "sound instinct of the people" it resulted in his suffering an intolerable injustice. The decision would be based entirely on political considerations.[1] It would be arrived at in accordance with justice and not as an act of grace. At the same time, the Board would have the power to exercise clemency.[1] Clearly the authors of this proposal are inspired by the same ideas as the Party Courts when they declare themselves incompetent to try a case "for high Party reasons."[2]

The official Commission on Criminal Procedure did not see eye to eye with the authors of the memorial; but that does not mean the proposals have been abandoned, for they will be put into force when the time comes. Meanwhile they throw light on the true nature of "peace through justice," and point the direction in which matters are developing.

F. The Situation before Hitler's Accession to Power as a Parallel to the Crisis of Autumn 1938

(*a*) *The Aim:*

In his speech at the Berlin Sportpalast on 12th September 1938, Hitler asserted that international conditions were similar to those in Germany before he acceded to power. We will round off our observations on the People's Führer-State with an examination of this statement.

Before 30th January 1933 Hitler was aiming to obtain power in order to govern Germany according to his ideas. In the autumn of 1938 his aim was dominion over Czecho-Slovakia. Both aims were for the purpose of raising the people boasting the "best blood" to the world-domination that is their "due."

[1] Freisler (see *n.* 1, p. 66), *op. cit.* pp. 35–7.
[2] See *n.* 3, p. 176.

(*b*) *The Will of the People :*

Again and again Hitler has proclaimed that he was summoned to rule by the will of the people, to rescue them from the chaos of the Communist world-revolution. What was the true state of affairs ?

At the presidential election in the spring of 1932 [1] Hitler received 36·8 per cent. of the votes recorded. His greatest success before he came to power was in the Reichstag election of July 1932 [2] when he won 230 out of the 608 seats. But in November 1932, already, at the elections for a new Reichstag, he lost 34 seats. The state of affairs in Lippe-Detmold—one of the small member countries of the Reich, with less than 200,000 inhabitants—gives an indication of the general situation. In this little country *Landtag* elections were held fourteen days [3] before Hitler's, nomination for the Chancellorship. For these elections the Nazis, with the assistance of a consideration [4] in the form of money from the large industries, carried on a propaganda campaign to an extent hitherto unknown in Germany. To show the country that the movement had not come to a standstill, they intended to have an " unexampled " victory. The polling showed, however, that it was already on the decline, for Hitler received only about 38·5 per cent. of the votes, against 41 per cent. in July 1932. When he was called to power, he was actually in a minority, for he disposed of 196 seats out of a total of 584, and even that included the 54 seats of Hugenberg's German National Party. Even the first elections after he came into power did not, as we know,[5] give him a majority, and it was only with the co-operation of the " Black-White-Red Front," which Hugenberg, Seldte (leader of the Stahlhelm),[6] and von Papen had formed, that he had a bare majority.

Germany's attack on the existence of Czecho-Slovakia

[1] 10th April 1932.
[2] 31st July 1932.
[3] 15th January 1933.
[4] See p. 73.
[5] See p. 137.
[6] See p. 73.

was concentrated on the Sudeten territories, inhabited by about three and a half million German Bohemians, in whom there is a certain admixture of other blood. Of these more than a million were declared opponents of National Socialism. After my flight at the end of 1935 I spoke in Prague to many Germans, both followers and opponents of Henlein. Not one of them desired incorporation in the Reich. Even at the beginning of the crisis only far-reaching claims for autonomy were made. Consequently many supporters of the Henlein Party had to submit to force when at Hitler's command it gave the order for the "return home to Germany." The Party claimed that they had behind them more than 90 per cent. of the inhabitants of the territories in question, and cited in proof thereof the last elections held in Czecho-Slovakia before the crisis. In this calculation, however, they ignored all but the German population, only deducting the German votes that had been recorded against the Party.[1] Such procedure is hardly in accordance with the "right of self-determination" to which the Nazis were appealing. When the votes of the people of non-German extraction in these districts are added to those of the German opponents of the Henlein Party, a very different picture of the "will of the people" emerges. Henlein asserts, for example, that he had 94 per cent. of the votes in the town of Reichenberg, 98 per cent. in Postelberg, and 96·5 per cent. in Iglau. Actually the figures should be 76 per cent. in Reichenberg, 50 per cent. in Postelberg and 44·5 per cent. in Iglau, and those represent 50 per cent., 31 per cent. and 25 per cent. of the population respectively.[1] This was the result of the oppression under which Henlein's opponents even then suffered, for few men have the courage of their convictions when classed with "anti-Nationalists, poisoned with the Jewish-Bolshevist spirit," for whom no fate is too bad.

[1] Letter from Wickham Steed, dated 28th July 1938, in *The Times* of 30th July 1938.

(*c*) *The Method :*

In the September crisis the Nazis adopted their familiar tactics.[1] Under all the principles of international law, Czecho-Slovakia should have been protected from attack on the part of Germany by the Locarno agreements, and by the assurances Hitler gave after he had denounced the Locarno Pact [2] and after the annexation of Austria.[3] In spite of this, in May 1938, large numbers of German troops were concentrated near the frontier for the intimidation of the Czech Government. For certain reasons Hitler considered it advisable for the moment to refrain from striking, and fixed 1st October 1938 as the date for the annexation of the Sudeten territories. Meanwhile close on a million and a half soldiers were mobilised, and propaganda both in Germany and in other countries was greatly intensified, the alleged oppression of the German inhabitants of the disputed districts being the pretext for this menacing attitude.

In this propaganda campaign much was made of the "brutality" of the Czechs, evidenced in history by the Hussite wars and by the incident at Prague that started the Thirty Years' War,[4] when the revolutionary Bohemian Protestants, who refused to acknowledge the Habsburg régime, flung the Imperial Counsellors out of the window.[4]

There was no truth in the allegation that the Sudeten Germans had been treated any worse after Hitler had given his assurances than before, and the Czech Government was prepared to remedy any abuses there might be. The "ill-treatment" of the Sudeten Germans was a myth comparable to the "Communist revolution under Thaelmann," [5] the "conspiracies" of General von Schleicher and Röhm,[6] Chief of Staff of the Storm Troopers, and the "guilt" of the German Jews for the assassination

[1] See pp. 168, 169. [2] 7th March 1936.
[3] 11th March 1938, Declaration by the British Prime Minister in the House of Commons of 14th March 1938.
[4] 23rd May 1618. [5] See p. 55. [6] See pp. 199, 204–5.

of Herr vom Rath in Paris.[1] Events in Vienna, like the murder at Potempa [2] before Hitler's seizure of power, cast a vivid light on the true concatenation of affairs. Nazis, "acting under orders," took the Archbishop's palace by storm and flung Monsignor Kravanik, a high Church dignitary, out of the window,[3] and left him lying in the courtyard with broken legs. Another high dignitary, Jakob Weinbacher, only escaped the same fate because he managed to cling to the window-frame until help reached him. He had deep gashes in both hands, caused by his persecutor's efforts to dislodge him.

It may be asked whether the attitude of the German people towards the Czecho-Slovak question would have been different if these events had happened a fortnight sooner and the whole truth had been allowed to become known. But, as it was, the people's patriotism was worked on and their passions fanned to flame, with the result that Hitler's seven-day ultimatum [4] was swallowed without appreciable opposition. The Munich Agreement removed the immediate danger of war.

(*d*) *A Halting Analogy:*

There is no true analogy between the Munich Agreement and Hitler's pact with other political parties,[5] which put the reins of government in his hands.[6] The former was concluded in accordance with the rules of international law, which, alas, are dominated by power politics;[7] the latter was based on German constitutional law, which it was essential to uphold in the interests of the Fatherland, and which was observed by President Hindenburg when he told Hitler to provide himself with a parliamentary majority.[8]

The very fact that Hitler drew this analogy shows clearly that in his view internal as well as external relationships

[1] See p. 160.
[2] See p. 124.
[3] 8th October 1938.
[4] 24th September 1938.
[5] See p. 73.
[6] 30th January 1933.
[7] See Introduction, p. 12.
[8] See p. 74.

are properly the object of power politics. And in their application he not only muzzles his own country's Press, but calls upon other countries to prevent "hostile" journals and newspapers from criticising him and his régime. The first steps taken by the Hitler Government towards the abolition of the freedom of assembly and of the Press,[1] which had up to then existed in Germany, were justified on the same grounds. The new Government described reports and articles concerning interference by bands of Nazis with their political opponents and with Jews, as unprecedented insults and affronts to its authority. It is true that in the early days they still had to permit complaints to be lodged against official interference; but the burning of the Reichstag soon furnished a pretext for abolishing even this protection.[2] To-day the freedom of assembly and of the Press—an obstacle to the expansion of Hitler's power—is at stake throughout the whole world.

The exercise of force as the only fountain of justice engenders evil qualities in the oppressor as in the oppressed. In spite of all experience, we were entitled to hope, after the Munich Agreement, that a new era had dawned, and we believed that Germany would once more take her place in the community of nations. The great successes of her foreign policy might have opened up undreamt-of possibilities, particularly that she would obtain those rights that the Republic had striven for in vain ever since Versailles. Yet she must celebrate her victory by intensifying her persecution of the Jews! All our hopes for the re-introduction of the principles of justice into international affairs were once more swept away.

The annexation of Czecho-Slovakia [3] and Memel [3] proves once for all that, in spite of the solemn declarations of her Führer during the crisis of September 1938, the Germany of Hitler is claiming not only further territorial expansion in Europe, but also the right to subject non-Germans to her domination; and that she has no more

[1] Emergency Decree of 4th February 1933.
[2] See *n.* 1, p. 53.
[3] March 1939.

intention of applying to eastern and central Europe her agreement with Great Britain providing for the peaceful settlement of all disputes, than of keeping her subsequent agreement with France. Events also prove that Hitler is persisting in the analogy referred to,[1] and intends to act on it. To conclude, therefore, I must refer to a little interlude, which by no means attracted the attention it deserved, and which opened, after the ground had been well prepared, on 24th March 1933, and was already closed by 14th July 1933. The outcome of it was the ejection of the other partners in the coalition, and the conversion of the "national resurrection" into "the National Socialist revolution." The Nazis dislike the affair to be mentioned, preferring the history of their rise to power to be presented in the form of a play without an interlude.

(*e*) *The "Rump" Parliament:*

The first Reichstag elected under Hitler met in the Kroll opera house in Berlin. How came a Party that only held a minority—though a large minority—of the seats, and could only count on a bare majority with the help of its partners in the coalition, to acquire absolute power "legally"?

In the first place, of the 646 members elected to the Reichstag, only 539 were allowed to attend, for 81 Communists and 26 of the 120 Social Democrats elected were in prison on the unjustified suspicion of having had a hand in the burning of the Reichstag.

Not one of the members present protested against the forcible exclusion of 107 members of Parliament. Were people still too much under the spell of the recent celebrations in the Garrison Church at Potsdam, and were they too strongly influenced by the charge, then held by some to be justified, of arson in connection with the Reichstag fire, that they did not dare to question the conduct of the Government? Or was the tradition of parliamentary constitution still too young in Germany, and the experience

[1] See *ante*, p. 287.

of it too short, for the conception of popular representation to be placed higher than party doctrines irrespective of party divisions ? It was this absence of ideals that prevented the formation of a solid Opposition which would have been strong enough at least to prevent the passing of the Enabling Law,[1] for this, since it amended the Constitution, required a majority of two-thirds. 441 members voted for it, 4 abstained and the 93 Social Democrats voted against it.

By its own action the Reichstag abdicated its authority for four years, for during that period its right of control, and its power to require the revocation of laws and decrees issued by the Government under the Enabling Law, were in abeyance. Only in the event of Hitler's Government being replaced by another was that law automatically to be repealed.

It is not only the Enabling Law that was unconstitutional, because it was passed by a " rump " Parliament, but also every measure taken under it by the Government.

In his speech in support of this law, Hitler solemnly promised [2] that the various countries of the Reich should not be deprived of their identity as individual States ; and it was, indeed, believed that this was in no danger since the powers of the Government were limited as regards the rights of the President of the Reich, the Reichstag and the Reichsrat.

Not more than a week had passed before the Government felt strong enough to issue the Co-ordinating Law,[3] giving the Governments of the member countries the same full powers in their territories as the Government of the Reich possessed. The Parliaments of the member countries were declared dissolved, and their Governments were instructed not to arrange for the election of new ones but to nominate the members on certain lines laid down. These provided, among other things, that Communist votes were to be ignored. The allotment to them of seats in the Reichstag and the Prussian Diet was declared

[1] Of 24th March 1933. [2] 23rd March 1933.
[3] Of 31st March 1933, see *n.* 1, p. 52.

inoperative, and substituted allotment was forbidden.[1] Thus a manoeuvre that had facilitated the passing of the Enabling Law by the Rump Parliament was sanctioned by a decree issued under that same Law!

The Reich Government appointed Statthalters to the various countries, with wide powers of interference.[2] That was the end of the individual States as separate entities.

While von Papen, Hugenberg and Seldte were telling the public how honourably they were keeping their "pact of friendship" with Hitler, the latter suddenly attacked them without a declaration of war. The friends of yesterday became the foes of to-day.

The Storm Troopers and Black Guards, under the command of Röhm, were growing in numbers and being armed, and were acting as auxiliary police. The powers of the police were being augmented by Frick and Göring in their capacity as the Ministers of the Interior for the Reich and for Prussia respectively, and transformed into a reliable weapon for the use of force.

Throughout the Reich skirmishes with the Stahlhelm and the other bodies of the Black-White-Red Front were taking place.

Seldte, Leader of the Stahlhelm and Reich Minister of Labour, capitulated without a struggle, went over to the Party, and surrendered the Stahlhelm to Hitler's command.[3] Many of his associates refused to follow him. Von Blomberg, Reich Minister of War, intervened and smoothed matters over with a written agreement[4] that was in effect a victory for Hitler.

Von Papen, who, evidently to relieve Hindenburg's anxiety, had been made Vice-Chancellor and Reich Commissioner for Prussia so that he could act as a brake on Hitler, found himself high and dry as early as April 1933, for the office of Statthalter of Prussia was taken by the

[1] See p. 52.

[2] Law of 7th April 1933 with amendments of 25th April 1933, 26th May 1933 and 14th October 1933.

[3] On 26th April 1933.

[4] Of 21st June 1933.

Chancellor himself,[1] who had nominated Göring as Prussian Premier.[2] Von Papen resigned his post as Reich Commissioner for Prussia, and, after the assassination of Dollfuss, was forced to give up the Vice-Chancellorship in exchange for the post of Hitler's Envoy in Vienna.[3]

Hugenberg was Minister both of Food and Agriculture and of Economics. Hitler nominated Darré over his head as Reich Farmers' Leader in charge of all agricultural organisations, from which Hugenberg was thus cut off.

At the London Economic Conference in June 1933 Hugenberg tried to create a favourable atmosphere for the return to Germany of her former colonies. Hitler had a semi-official communiqué issued to the Press, in which he stated that Hugenberg's attitude represented his (Hugenberg's) own "private opinion," and that it was "not binding on the Government." This cavalier treatment brought Hugenberg post haste back to Berlin, where he had an interview with Hitler. But this availed him nothing, and he resigned his offices.[4]

At Hitler's request Hindenburg nominated his successor. Nor did anyone trouble about the "automatic" expiry of the Enabling Law, although the change in the character of Hitler's Government resulting from Hugenberg's resignation was so obvious that the "Government of the national resurrection" might have been regarded as "superseded." Hugenberg had also expressed this view in public before his resignation,[5] and had called upon Seldte, after his capitulation, to resign his seat in the Reichstag, which he owed to the fact that he had been on the list of the Black-White-Red Front, and which he therefore had no right to use on behalf of the Nazi Party. On his resignation from the Government he said not a word about this. The Nazi dictatorship had taken the wind out of the German National Party's sails.[6] Even the demands for a con-

[1] See *n.* 2, p. 295.
[2] Decrees of 11th April 1933 and 21st April 1933.
[3] 25th July 1934.
[4] 29th June 1933.
[5] Declaration of 20th April 1933.
[6] See p. 121.

stitutional State were silenced.[1] Hugenberg and his friends learned the same lesson as the aristocratic trees in Æsop's fable, which fell a victim to the wood-cutter's axe, though they had imagined that they could save themselves by graciously permitting him to use the wood of a common ash tree to make a handle for his axe. By his rigid rule within his own party, Hugenberg had prevented the rise of men who had given him timely warning and demanded separation from the Nazis. The tale of these men begins with Dr. Oberfohren, whose tragic death, alleged to be due to suicide, gossip connected with a too intimate knowledge of the facts relating to the Reichstag fire. Like von Papen, Hugenberg has to thank his greater gift of adaptability for his safety.

The Government's ex-allies vied with the former opposition parties in "voluntary" dissolution. The Social Democrats alone were not considered worthy of such an honourable end. Their Reichstag seats, like those of the Communists, were simply abolished.[2] By such "legal" methods the rump Parliament grew smaller and smaller. To make it clear that the National Socialist Party was the only one permitted,[3] and that the revolution was finished,[4] suitable persons from the parties that had expired "voluntarily," such as von Papen and Hugenberg, were admitted to it as "guest-members."[5] Hitler now had a Reichstag that passed every law he wanted, unless he intended to decree it himself. Those passed in the ensuing period[6] are merely the resultant product of a position of authority that had developed in a few weeks in Hitler's favour. The Black-White-Red Front, which had hoped to hold the balance, broke down lamentably in spite of its powerful connections. The uniforms of its "Bismarck Youth" were confiscated, and the prisoners of the Columbia Concentration Camp in Berlin were made to wear them. These I have myself seen.

[1] See *n.* 1, p. 74.
[2] Ordinance of 7th July 1933.
[3] Law of 14th July 1933.
[4] Circular of Frick of 11th July 1933.
[5] See p. 168.
[6] See pp. 167–9.

Must not all these events inevitably increase Hitler's belief in his invincibility? When the decisive moment comes strong words from his opponents are followed not by action but by capitulation.

Over and over again his opponents have suffered from the delusion that by letting him have his own way they will bring about an improvement. But they overlook the "hysterical passion" [1] that will never allow the movement to come to rest. Under cover of the assertion that a Reich without parties or class distinction is to arise, a few leaders live a life of ease, paid for by the people, who must never learn that in truth the distinctions are sharper than ever before.

Right has been delivered up to Might. Such is the star under which the "People's Führer-State" was born. In German law as in others, the fact that the birth of a temporal power is illegitimate does not necessarily mean that that power will not endure.[2] What is decisive is its ability to set limits to its own dominance. Thus only will it wipe out any taint that may disfigure its birth. In a civilised community the fundamental principles of law and justice cannot always be ignored at times when we may justifiably look for them to be enforced, or the taint of birth will prove to be the germ of decay.

[1] *Mein Kampf*, p. 475.
[2] Decisions of the Supreme Court of Appeal in civil cases, vol. c.

CHAPTER IV

THE HOLY WAR

A. The Christian Churches and the State

(*a*) *The Roman Catholic Church :*

The "People's Führer-State" aims at extending its control to cover matters of faith and conscience, which are the Churches' prerogative, and therefore it attacks the Churches. Despite their basic identity, however, the difference between the relationship to the State of the Roman Catholic Church and that of the Evangelical Church results in differences in the legal aspect of this struggle.

The Catholic Church bases its existence and activities on divine law.[4] It traces its foundation to Christ's promise to St. Peter ; and its power extends over all who have received baptism, including therefore heretics and schismatics. The bonds that hold it together are community of faith and the sacraments. Its head is the Pope as Christ's Vicar on earth, and he is supported by the bishops as successors of the apostles. The means of Grace can be administered only by specially consecrated priests, on whom the rule of celibacy [1] is imposed. The distinctions that thus arise between priests and laity are the basis of the ecclesiastical hierarchy with its different ranks. Pope Gregory VII.[2] rejected the doctrines that supreme ecclesiastical power was vested in the bishops as a body and that the Pope was only *primus inter pares*.[3] He claimed the sole power for the Pope and subordination of the bishops,

[1] A rule since 1074 ; imposed by the first (1123) and second (1139) Lateran Councils and confirmed by the Council of Trent.

[2] 1073–85. [3] Episcopal system. [4] *Jus divinum*.

whose assemblies had only an advisory character.[1] The decisions of the councils needed his confirmation.[1] Thus it was the Pope's aim at the same time to make himself supreme ruler of the world and to hold in his hands the destinies of princes and nations.

St. Augustine[2] had already announced that the State, being sinful, must submit itself to the Church. For later arguments in favour of the paramount rights of the Roman Primate the pseudo-Isidorian Collection,[3] a series of forged decretals and other pronouncements of Roman bishops, are of great importance. The Popes refused to admit the restriction of the power of the divine universal State by national States, but demanded that on the other hand, the States, when required, should place their secular power at the disposal of the Church.[4] Innocent III. expressed this view in the sentence: "Dominus Petro non solum universam ecclesiam sed totum reliquit seculum gubernandum." They consider themselves authorised to depose temporal rulers, to dispose of the thrones thus rendered vacant, to absolve subjects from their oath of allegiance, and to declare national laws null and void.

The world witnessed a five-hundred-year struggle between the spiritual and secular powers. The Peace of Augsburg and the Treaty of Westphalia gave legal standing to the Lutherans and the Calvinists, but Pope Innocent X. rejected both treaties.[5] The struggle continued. Modernist tendencies in the Church were condemned in the Bull *Quanta Cura* composed by the later Pope, Leo XIII.,[6] and published by Pope Pius IX.,[7] and in the *Syllabus errorum*[8] that accompanied it; and freedom of conscience, the sovereignty of secular States, the equality of the Evangelical Church, Socialism, and Bible societies, were all rejected. Finally in 1870 the Vatican Council submitted to Pius IX. and passed the *Constitutio dogmatica prima*,

[1] Papal system.
[2] In his *De Civitate Dei* (*circa* 400).
[3] Middle of the ninth century.
[4] *Brachium saeculare ad nutum sacerdotis.*
[5] 1648, *Motuproprio* "*Zelo Domus Dei.*"
[6] 1878–1903.
[7] 1846–78.
[8] 8th December 1864, *Syllabus complectens praecipuos nostrae aetatis errores.*

which laid down the postulate that the Pope is above the Council and that he is infallible when he speaks *ex cathedra*, *i.e.* when, as the teacher and shepherd of all Christians, he makes a pronouncement regarding faith or morals [1] for the whole Church.

The German bishops, who had opposed the dogma of infallibility both before and at the Vatican Council, issued a pastoral letter,[2] in which they declared the Vatican Council to be a lawful council and demanded subordination to its decisions.

This resulted in the separation of the "Old Catholics," who met at Bonn and united to form a separate public corporation under the "Catholic Bishop of the Old Catholics of the German Reich."

The dogma of infallibility was at the same time a new argument for the Catholic doctrine of the subordination of the State. The Roman Catholic Church wishes, by means of its dogmas, to proclaim to humanity true revelation only; and so when these are announced they must be regarded as having existed from all eternity. The same applies, therefore, to all papal pronouncements that have been issued in past centuries establishing the sovereignty of the Church over the State.

Pius IX. proceeded unmoved on the path he had chosen. In the "cultural conflict" with Prussia,[3] which was concerned with the influence of the Church over the schools, and with the monastic orders, particularly the Jesuits as the backbone of the "Catholic Counter-Reformation," etc., he declared Bismarck's [4] Laws null and void.[5]

With the end of this conflict, which was negotiated, the Prussian laws that had been passed against the Church were repealed. Nevertheless the Curia upheld its dogmas in principle, though their forms were modified. Leo XIII. explained the matter by saying [6] that the Church in its

[1] *De fide vel moribus.*
[2] End of August 1870, at Fulda.
[3] 1871–87.
[4] 1873–74.
[5] 5th February 1875, Bull *Quod numquam.*
[6] 1st November 1885, Encyclica *De civitatum constitutione christiana.*

maternal loving-kindness permitted States to exist, and that that State was happy in which the Church set the standard of civil order.

Pope Pius X.[1] also adopted a more conciliatory attitude when he authorised in principle the entry of Catholic workers into trade organisations that were not purely Catholic. Thus he strengthened the more accommodating Cologne group against the less tolerant Berlin group in the German Catholic working-class,[2] and so served the cause of social peace.

This historical cross-section exhibits the growth and continuance of the Roman Catholic Church as a fully developed legal organism. The dividing line between faith and law is obliterated by the connection of this organism with divine revelation. It seeks by means of the law to penetrate into spheres that by their nature are not amenable to coercive treatment. Anyone who infringes the rules of faith and dogma transgresses the law. People must either subject themselves to it or suffer the appropriate punishment. Exclusion from the blessings of the Church is to the devout Catholic a terrible burden on the conscience, and is stronger than the coercive power of the State. Perhaps it is just because the Pope has lost his temporal power, and his strongest temporal supporters—the Austro-Hungarian and the Spanish Monarchies—have vanished, that his spiritual power over the faithful is stronger than ever it was. It is within his discretion to make hostility to the State and the temporal authorities an obligation of conscience. And even to-day he has full power to excommunicate, and to impose the interdict and other ecclesiastical punishments.

No legal organism has ever succeeded so well as the Roman Catholic Church, with its centuries of experience, in adapting itself to the facts of a situation and yet in maintaining its principles and so making a further advance

[1] 1903–1914.

[2] 24th September 1912, Bull *Singulari quadam*.

when the time is ripe. It knows all the heights and depths of human nature ; [1] it understands how to help the weak and the pusillanimous—that is, the majority of mankind—by encouraging them to help themselves, but at the same time impressing upon them that only in the Church can they find the deepest sense of security and inner peace for their souls.

The German State, before Hitler came to power, had inscribed freedom of faith and conscience upon its banners and thus, apart from the cultural conflict under Bismarck,[2] had made it possible for the Roman Catholic Church to live at peace with the Kingdom of Prussia and the other German States, and later with the Empire and the Weimar Republic.

The relations between the Curia and the State are regulated by Concordats—agreements arrived at by the Pope on the one hand and the governments of the individual German States, or, after Hitler's seizure of power, the German Reich, on the other.

Though the Concordats are of the nature of treaties, the Curia maintains its view that the secular power is subordinate to it by the assertion that they are privileges granted by the Pope to the State, by which the State is bound, while the Pope can at any time amend or determine them. The opponents of this view hold that Concordats are to be treated merely as laws of the State, which alone is authorised to make them. In practice the custom has grown of avoiding disputes by treating the Concordats as international treaties, since by international law the position of the Pope as a sovereign is unquestionable. Concordats are validated under ecclesiastical law by the issue of a Bull covering the same matter, and they are made legally binding on the secular State by the passing of laws implementing them.

In this way arose the present organisation and delimitation of the dioceses of the Roman Catholic Church in the

[1] *Nihil humani a me alienum esto!*

[2] See p. 301.

German Reich,[1] which was completed by the Concordats with Bavaria,[2] Prussia [3] and Baden.[4] These are still in force, since they were confirmed and supplemented by the Concordat with the Reich.[5]

The Roman Catholic Church is recognised within the territory of the German Reich as a "public-law" corporation.[6] The various dioceses manage their affairs independently according to canon law and the general laws of the State. For the discussion of matters of common interest to several dioceses the non-Bavarian Archbishop and Bishops [7] meet at the "Fulda Episcopal Conference" and the Bavarian Archbishops and Bishops [8] at the "Freising Episcopal Conference." Each conference is represented at the deliberations of the other. The president of the Fulda Conference is the Prince Bishop of Breslau, Cardinal Dr. Bertram, and of the Freising Conference the Archbishop of Munich-Freising, Cardinal Dr. von Faulhaber. These two represent the German episcopacy in dealing with the Government of the Reich in so far as they have authority from the Conferences in matters concerning both, and for the reception of communications.

Dr. Schulte, Archbishop of Cologne, is also a Cardinal.

As a result of the dispute over the Church the names of the following have also become known: Dr. Gröber and Count von Galen, Archbishops of Freiburg and Munster

[1] Bavarian Concordat of 5th June 1817; for the nine "Old Prussian" provinces, Bull *De salute animarum* of 16th July 1821; for Hanover, Bull *Impensa Romanorum pontificum* of 26th March 1824; for the Upper Rhenish church province, Bull *Provida sollersque* of 16th August 1821, and *Ad dominici gregis custodiam* of 11th April 1827.

[2] 29th March 1924.

[3] 14th June 1929.

[4] 12th October 1932.

[5] 20th July 1933.

[6] See *n.* 4, p. 172.

[7] The Prince Bishop (Archbishop) of Breslau, the Archbishops of Cologne, Freiburg, Münster and Paderborn, the Bishops of Berlin, Ermland (East Prussia), Fulda, Hildesheim, Limburg, Mayence, Meissen, Osnabrück, Rottenburg and Trier, the Apostolic Prelate in Schneidemühl, and the Archiepiscopal Vicars General in Mittenwalde and Branitz as representatives of the Prussian parts of the Arch-dioceses of Prague and Olmütz.

[8] The Archbishops of Munich, Freising and Bamberg, and the Bishops of Augsburg, Eichstätt, Passau, Regensburg, Speyer, and Würzburg.

respectively, Dr. Bares, Bishop of Hildesheim, Peter Legge (Meissen), Dr. Berning (Osnabrück), Dr. Bornewasser (Trier), and Dr. Sproll [1] (Rottenburg). So far as this is possible, Dr. Gröber is favourably inclined towards National Socialism—more so, at least, than any of the others.

The links between the Holy See and the German Reich are a Papal Nuncio in Berlin and a special German Ambassador in the Vatican City. The Nuncio is always the doyen of the diplomatic corps accredited to the Reich.

Apart from the Sudeten District and Austria, which is strongly Catholic, 32.3 per cent. of the population of Germany are Catholic, 64.4 per cent. Evangelical, .9 per cent. Jewish, while 2.4 per cent. belong to some other religious community or to none at all.

Examination of the social classes to which German Catholics belong shows an interesting variety. Apart from the Catholic clergy, there are the noble families of Austria, South Germany and the Rhineland ; the middle classes of the Rhenish and South German towns ; and the great mass of artisans and peasants in the West and South. The religious division among Conservatives militated against political progress. The Prussian Conservatives were strongly Evangelical ; but the Conservatives of the rest of Germany were mostly Catholics, who, before Bismarck founded the Empire, regarded the Emperor of Austria as their temporal head. Some of these who were included in the new German Empire sought their political home in the Centre Party ; but the left wing of this party had the ascendancy and effected the coalition with the Social Democrats, which lasted for some years under the Weimar Republic. Von Papen's attempt to detach from the Centre Party a Right, or Conservative, Wing and to unite it with the Prussian Conservatives was doomed to failure, for he overlooked the *savoir-faire* of the leaders of the Catholic Church, whose skill in the handling of men enables them to harmonise the aims of the Church with those of the governing classes and thus to safeguard the Church's

[1] See p. 171.

destiny. It was fortunate for Germany that the Roman Catholic Church allowed the Centre Party to steer the democratic course that the existence of such large numbers of Catholic workmen and peasants necessitated. The significance of the Catholic trade-unions and peasant organisations, and of those under Catholic control, to the German workers' movement, as well as that of the Socialists, must not be underestimated.

If the Centre Party had been able to imbue the Prussian Conservatives with a little of their democratic spirit, valuable political results would have been obtained. Von Papen took the opposite path and became the herald of National Socialism with the Curia, after the too compliant Brüning, who had been appointed Leader of the Centre Party under the Hitler Government, had failed to make the slightest effort at political resistance. As a political party the Centre has disappeared, but the legal structure of the Catholic Church in Germany continues to exist and still holds all its strongest cards in its struggle against the new State.

(*b*) *The Evangelical Church :*

In contrast with the Roman Catholic Church, the Evangelical Church does not regard itself as a mighty legal organism, entitled to subject the State to its power, but as a spiritual association of people within the State ; and it makes use of the law only so far as it is necessary for the proper ordering of the relations between individuals with common aims and activities. There is, it is true, a Protestant Church—a faith—that takes no account of national frontiers, but in a spiritual and not a legal sense ; and so we find the same or similar observances in the Churches of different countries, but their legal basis is to be found only in the laws of those countries. Before Hitler assumed power, there were twenty-eight Evangelical territorial Churches[1] in Germany, of which eight were Prussian. Historically that is to be accounted for by the

[1] See *n.* 1, p. 377.

division of Germany into numerous independent States, which may have been regrettable politically, but was by no means a disadvantage to the Evangelical idea. It was precisely the need to struggle against the authority of the State, without temporal power and without assistance from outside, that awakened the best intellectual forces of the Church and made it aware of its spiritual nature. In the end, the twenty-eight territorial Churches combined to preserve common evangelical interests in dealing with the Reich and foreign countries, and formed the German Evangelical Church Federation.[1] This was[2] a "public-law corporation,"[3] with a Church Assembly, a Church Federal Council and a Church Committee. The Committee was the representative body of the Federation, whose current business was administered by the Church Federation Office in Berlin. Its director at the beginning of the Hitler régime was Hosemann, a member of the High Consistory. At that time the president of the Committee was also president of the Supreme Evangelical Council in Berlin, Dr. Kapler ; and the vice-president, the president of the Evangelical Lutheran Consistory in Dresden, Dr. Seetzen. The Federation of German Evangelical Reformed Churches and the Evangelical Brotherhood in Germany were affiliated to the Church Federation.

The Evangelical Churches of all nations formed themselves into a free union under the leadership of Sweden.[4] Among the other international associations whose aim is the linking up of common spiritual ideas, may be mentioned the "World Alliance of Reformed Churches," which includes the Churches founded by Zwingli in Switzerland and the Calvinist Churches, especially in France, the Netherlands, Great Britain and Germany.

The Reformers[5] rejected the Catholic distinction between priests and laymen, and proclaimed the "universal priest-

[1] 1922.
[2] In accordance with Article 137 of the Weimar Constitution.
[3] See *n.* 4, p. 172.
[4] 1922.
[5] Luther, Zwingli, Calvin.

hood " of all believers. The Pastor is not above the congregation but is a member of it. The office of Pastor is the only spiritual office in the Evangelical Church, which rejects a graded hierarchy in the priesthood. It is true that it cannot normally be practised without ordination; but this is not a sacrament, for it is only the solemn dedication of the candidate to service of the word of God. It endows him with no supernatural and therefore no indestructible qualifications. Its effects are nullified by resignation or deposition. The congregation is required to participate to a large extent in the life of the Church, to appoint the officials and collaborate in the exercise of ecclesiastical discipline, the dispensing of Christian charity and the administration of Church property.

The Evangelical Church does not acknowledge the *jus divinum*,[1] but only the command to preach the Gospel and administer the sacraments.[2] The only sacraments it recognises are Baptism and the Eucharist.

The Evangelical Church teaches that temporal authority is derived from God. Obedience is due to it, therefore, even when it is not Christian, or even when it is anti-Christian. But if temporal authority demands anything that is a sin according to the laws of God, then it is God who must be obeyed rather than the men who are the representatives of temporal authority. This obedience to God, however, does not consist in revolt against sinful temporal authority but in bearing the pains that disobedience to temporal authority entails.

Whenever ecclesiastical and temporal affairs overlap, as for instance in the case of marriage, the Church should give the State its assistance; in all else it must keep itself and its spiritual power aloof from worldly matters. It must not enthrone or dethrone kings, nor must it invalidate temporal laws or obedience to temporal authority Nor, remembering Christ's words " My kingdom is not of this world," must it set up rules for temporal authority.[3] But

[1] See *n.* 1, p. 299. [2] Article 28 of the Augsburger Confession.
[3] Melanchton, Confession of Augsburg, Article 28.

temporal authority has no concern with the Gospel; freedom of faith and conscience is outside the scope of its power. "The kingdom of Christ is no concern of the Holy Roman Emperor." [1]

This conception, which accords little importance to temporal authority in connection with religion, is closely bound up with the doctrine of Predestination, which the Reformers accepted, and which was preached by St. Augustine on the authority of St. Paul.

In Germany the clear-cut distinction between Church and State that follows from this has never been drawn in practice. Strangely enough, it was Luther who created the first obstacle to such a distinction by calling upon the temporal authorities to maintain the unity of Church doctrine.[2] Thus he became the spiritual co-founder of the system whereby the reigning prince of each state was head of the Church in his dominions. From being a free spiritual establishment within the State, the Evangelical Church became an ecclesiastical establishment of the State; and with that the epoch of the State Church opened.

With this step Luther undoubtedly caused a disastrous breach in the logical progress of Church reform. But he had in Frederick the Wise, Elector of Saxony, a magnanimous prince and protector and it is, therefore, not surprising that he did not fully envisage the legal consequences of his action, or realise that anti-Christian temporal authorities might later be a danger to the Evangelical Church. Not until four hundred years had passed, when the Hitler Government made use of the historic National Church as the basis of an emergency law for the government of the Evangelical Church in the interests of the State, and thus forged for itself a weapon fatal to the independence of the Church, did the disastrous effects of Luther's error of judgment become apparent.[3]

Calvin was more cautious in his foundation of a State

[1] Melanchton, Confession of Augsburg, Article 28.

[2] Preface to the *Sächsisches Visitationsbuch.*

[3] See *n.* 1, p. 379.

Church. He distinguished between those temporal authorities who confessed the Evangelical faith and those who opposed it. Only in the former case did he aim at an organic connection between Church and State ; and for this his labours in the " ecclesiastical town " of Geneva provided a brilliant example.[1]

Luther's attitude facilitated the establishment of the " spiritual monarchy," which developed in Germany as the result of the Thirty Years' War ; that is to say, the union of the local State sovereignty,[2] which was subject only in name to the overlordship of the Holy Roman Empire of the German Nation, and which the States secured at the expense of the sovereignty of the Empire, with control of the Churches by the reigning princes. The latter—the temporal head of the State—was at the same time *summus episcopus*—head of the Church.[3] This was so even if he happened to profess the Catholic faith ; but in that case he exercised his authority through adherents of whichever Evangelical creed prevailed in his domains.

Evangelical ecclesiastical law, in contrast to Catholic canon law, raised no objection to the *jura circa sacra* of the reigning prince ; though it opposed the *jura in sacra*. But the reigning princes overruled all opposition, claiming that, inasmuch as the ecclesiastical power of Catholic bishops over Evangelical countries had ceased,[4] that power had passed into their hands.[5] From this the conclusion was drawn, however, that the reigning prince was bound by the decisions of the theologians, and so the view came to prevail that State sovereignty was the fountain of even the *jura in sacra*.[6]

Difficulties thus arose for the Reformed Church (Calvinists), since for them, as opposed to the Lutherans,

[1] *Ordonnances ecclésiastiques de l'Eglise de Genève*, 1541.
[2] *Jura majestatica, jura circa sacra.*
[3] *Jura in sacra.*
[4] Peace of Augsburg, 1555, and Peace of Westphalia, 1648.
[5] Evangelical episcopal system (not to be confused with the Catholic episcopal system) ; see *n.* 4, p. 299.
[6] Territorial system.

the constitution of the Church is part of their creed—a significant point, as we shall see, even in the present struggle over the Church.

According to this creed an elected presbytery [1] presides over each individual congregation and wields the ecclesiastical power. Above the congregations stand the classical, presbyterial, provincial, and general Synods, which consist of clerical and secular members, each Synod being directed by a body called the *Moderamen*, which administers current affairs when the Synod is not in session. Because of the small size of several of the German States, it often happened that only the two lower classes of Synods, sometimes even only one State Synod, were to be found.

No German reigning prince, from the beginning of the Middle Ages until the second half of the nineteenth century, permitted such a Church constitution. The Reformed Churches, as well as the Lutherans, had to accept the Consistorial Constitution, whereby the Church, like the rest of the State, was ruled bureaucratically by clerical and secular officials. The Calvinists surmounted this difficulty by means of a fiction: although they clung to the idea that the *jura in sacra* belonged to the congregations, they alleged that, at the time of the Reformation, the congregations had already tacitly surrendered their administration to the reigning princes on grounds of expediency.[2]

This theory gained influence as the centuries passed. The Reformed Churches in the German States made use of it to obtain, as far as possible, the transfer of ecclesiastical power back to themselves and to re-establish the old Presbyterial-synod constitution. The Lutherans gained also from this, especially in those districts where union between them and the Calvinists had been effected.

The Great Elector, Frederick William of Brandenburg, father of the first King of Prussia, strove to achieve this union. But a century and a half was to pass before that end was accomplished.[3] Many of the other German States

[1] The Elders. [2] Territorial system. [3] 1817.

followed the example of Prussia, so that union was effected in the greater part of Evangelical Germany. But its terms varied considerably in different States. In some cases it extended only to the authorities responsible for the government of the Church, in others it covered the forms of religious worship, *i.e.* the service and the sacraments.[1] It was most firmly established in the districts where it extended to doctrine, in which case either acceptance of the Holy Scriptures or agreement upon the Creed[2] was taken as the basis of religious teaching.

In those parts of Germany where the union was not effected, the Lutherans and the Reformed Churches had separate administrations.[3]

When at last the time came in Germany—in the nineteenth century—to limit the power of absolute monarchs by parliaments and local self-government, ecclesiastical bodies were established for self-government within the Churches. The Churches were still governed by the reigning princes, but in addition the presbyterial and synodal system was re-established in the Reformed Churches. In the United and Lutheran Churches this arrangement was combined with the Consistorial constitution.

In Prussia, for instance, the highest spiritual authority in the government of the Church was the supreme Evangelical Church Council, under which Consistories functioned for each province. Each province had one or more General Superintendents, who were both members of the Consistory and clergymen, and who were responsible in particular for the spiritual guidance of their parishes.

The basis of Church autonomy was the congregation, which operated through the Congregational Church Council and the Congregational Representatives. Several congregations formed a District Synod, several District Synods the Provincial Synod, and the Provincial Synods the General Synod. Organic union was established

1 *E.g.* in the "Old Prussian" provinces.
2 *E.g.* in Baden.
3 *E.g.* in Hanover.

between these representative bodies and the authorities who govern the Church.

The distinction between the sovereign rights of the State over the Church (*Jura circa sacra*) and the government of the Church by the reigning prince (*Jura in sacra*) became more precisely defined. In the former, matters were settled by the State legislature without the co-operation of the Church. In the latter, the King of Prussia could not act without the approval of the General Synod ; but he did not sanction and promulgate a law approved by it until the appropriate government department had stated that the law was not prejudicial to the interests of the State.

The Evangelical Church owed to the Weimar Republic the complete re-transfer of Church government into its hands. The regulation of ecclesiastical affairs was still a matter for the separate countries, as it had been under the Empire ; but the Weimar Constitution not only granted complete freedom of faith and conscience and the undisturbed right of worship,[1] but also expressly guaranteed, in addition to the fundamental rights of assembly and association and of the free expression of opinion, the freedom to combine into religious associations that rejected a State Church.[2] These rights could not even be invalidated " temporarily " under the emergency powers vested in the President of the Reich, since they were not part of the seven fundamental laws.[3]

Thus the regular courts were enabled to declare that certain measures taken by the government in the Church dispute were contrary to the Constitution, and to award their salaries to clergymen on whom disciplinary punishment had been inflicted. The objection put forward by Nazi lawyers,[4] that the Constitution was rendered obsolete by the revolution, or at most should be interpreted under

[1] Article 135 of the Weimar Constitution.
[2] Article 137 of the Weimar Constitution.
[3] Article 48, clause 2, of the Weimar Constitution, see p. 53.
[4] Professor Huber, Kiel, *Law Weekly*, 1934, p. 1745, No. 1.

the restriction of point 24 of the Party Programme,[1] was not accepted by the Courts. These also functioned in cases relating to other religious societies, such as the *Ernste Bibelforscher* (Bible Research Students).[2] The crucial point was whether the body in question was to be regarded as a *Religionsgesellschaft* (religious society), or as a *religiöser Verein* (religious union). The latter were unquestionably subject to the President's emergency powers. The distinctive feature of a religious "society" is that it must be a "social organisation of the adherents of one and the same definite and particular creed." In the case of all Christian Churches this is beyond question.

Since the foundations of the German Evangelical Church are the territorial Churches, I take as the basis of my explanation the conditions in Prussia, the biggest of the territories.[3] Events have taken a similar course in the others.

After the collapse of the monarchy in Prussia,[4] the King's power in the government of the Church first devolved upon three Evangelical Ministers of State. Then, however, the Free State of Prussia proceeded on the lines laid down by the new Reich Constitution. The Evangelical Churches of the United, the Lutheran and the Reformed faiths were not only granted autonomy, but the State also restricted its own sovereign rights.[5] It undertook that

[1] "We demand the freedom of all religious creeds in the State in so far as they do not jeopardise its existence or transgress the moral feelings of the German race.

"The Party as such represents the standpoint of a positive Christianity, without binding itself to any particular creed. It resists the Jewish-materialist spirit both in our thoughts and in our actions, and is convinced that their permanent recovery can only take place from within on the principle 'Communal welfare before individual welfare.'"

[2] Judgment of the Supreme Court of 23rd January 1934, *Law Weekly*, 1934, p. 767, No. 18.

[3] See p. 314, *n.* 3, pp. 306, 357.

[4] November 1918.

[5] Prussian State Law concerning the constitutions of the Evangelical Prussian Churches, 8th April 1924, and Agreement of the Free State of Prussia with the Evangelical Prussian Churches of 11th May 1931, together with the State Law concerning this, of 26th June 1931.

objection to Church laws submitted to it must be made within one month and under definite conditions. If the Church regarded the objection as unjustified, the matter was decided by the process laid down for administrative disputes, the highest instance being the Prussian Supreme Administrative Court in Berlin.[1] The autonomy of the Churches was still further extended. The authority of the former Royal Church government was now exercised by an ecclesiastical "Senate," to which belonged, among others, the President of the General Synod, the President of the provincial Church Councils and the President and Vice-President of the Supreme Evangelical Church Council. In addition, the "Special Courts of the Church Province" and, as Court of Appeal, the "Special Ecclesiastical Court," were formed, as independent ecclesiastical authorities subject only to the law of the land, for settling legal disputes and differences of opinion concerning Church administration.

Thus the Evangelical Church in Prussia was freed from its close connection with the State—a connection that was alien to its very nature. Its long connection with the Prussian kings had led to a certain rigidity, because the majority of the clergy, including the General Superintendent and Superintendents,[2] had a strong leaning towards "Prussian Conservatism." But the clergy, unlike the political party, as we shall see, certainly stood the test admirably in the struggle over the Church. Though the Evangelical Church was then regarded as on the same legal footing as any other intellectual or philosophical association, it was freed from political fetters and, with the help of the prestige derived from its age, could again fight as a free spiritual association for the solution of religious problems. This was a valuable period of preparation for its later struggle with the new Reich.

[1] See *n.* 5, p. 314.

[2] A Superintendent in the Old Prussian Evangelical Church is a clergyman who has his own parish and is at the same time Chairman of the District Synod. A General Superintendent, besides having his own parish, holds an important position in the Provincial Synod and the General Synod.

In the end the Evangelical Church attained the same relationship to the State as the Roman Catholic Church, for the Free State of Prussia had also concluded a treaty [1] with the former, known as the " Evangelical Concordat." One of its articles [2] in particular has attained special importance in the struggle over the Church. This is to the effect that no one may be appointed head of any ecclesiastical authority unless it has first been ascertained by inquiry of the State authorities that there is no objection to him on political grounds.

B. National Socialist Theology

(*a*) *Positive Christianity* in the usual sense denotes a movement in the Church towards literal observance of the precepts both in doctrine and in conduct. In the Evangelical Church, for example, it therefore signifies Protestant orthodoxy. Does this point of view coincide with that put forward by the Nazis ? [3]

Hitler claims that both the devoutest Catholic and the devoutest Protestant can support him in his attempt to eradicate the destroyer of aryan humanity.[4] He considers that doctrinal systems are necessary, and that they are to religion what legal systems are to the State.[5] Therefore he condemns attacks on the dogmas of the Church, at least until a substitute can be provided for them. He sees in the Christian creeds valuable aids to the religious and moral strengthening of the nation, but opposes their degradation into tools of party-political interests.[6] In his Reichstag speech of 23rd March 1933,[7] already frequently referred to, he reaffirmed this attitude to the Christian religions ; and he promised not to infringe the rights granted to them in the Concordats, but claimed that they should similarly respect the work of the new government.

[1] 11th May 1931. See *n.* 5, p. 314.
[2] Article 7.
[3] See *n.* 1, p. 314.
[4] *Mein Kampf*, p. 632.
[5] *Mein Kampf*, p. 293.
[6] *Mein Kampf*, pp. 294, 379, 380.
[7] See *n.* 2, p. 294.

Feder, the official interpreter of the Party Programme,[1] gives us no further information about "positive Christianty." He contents himself with the remark that all questions, hopes and desires concerning the new form in which the German people should seek to know and experience God, have eternal significance, and therefore far transcend the bounds of even so radical a programme as that of National Socialism. He protests, however, against the Party being identified with efforts to establish a cult of Wotan.

Rosenberg,[2] "Commissioner for the ideological education of the National Socialist Party," expresses himself much more thoroughly on this point.

According to him, the supreme values of the Roman Catholic and Protestant Churches are "negative Christianity," and they do not conform to the racial qualities of the nordic German soul. The purpose of the present-day search for religion should be to clear the way for a positive, Germanic Christianity. In his opinion it is only the heroic *life* of Christ that shows us positive Christianity, not the agony of His *death*, for which the Alpine and Mediterranean races worship Him. It is the mighty preacher and wrathful cleanser of the Temple, who swept His hearers off their feet, whom all followed—and not the Crucified, the Sacrificial Lamb of Jewish prophecy—that is to-day the ideal that shines forth for the Germans out of the Gospels. In so far as it does not shine forth, the fault is with the Jewish-Syrian accretions, which have made of His life a doctrine of cowardice. All the ecstasies of the Sermon on the Mount, and such precepts as "Recompense to no man evil for evil" or "Whosoever shall smite thee on thy right cheek, turn to him the other also" are, he says, traceable to such falsifying additions. Christ's chief characteristic was a burning defiance, and it was for this that He had to die.

[1] See *n.* 3, p. 139, *op. cit.*, pp. 57–8.

[2] See *n.* 1, pp. 103 and 136; and *Mythus*, pp. 71, 76, 114, 145, 153, 156, 158, 159, 179, 215, 217–18, 223, 234–5, 599, 603, 604, 607–8, 611, 614, 616, 618–19, 621–2, 624, 628, 635–6.

His doctrine of the "Kingdom of Heaven within us" strengthens the assumption that He was not a Jew.

Rosenberg admits that Christ's religion was a gospel of love, but he asserts that the idea of love possesses no power to create enduring types, that it has always been used in the service of other values, and that it must therefore be subordinated to the idea of honour, which does possess the power to create enduring types. The love of honour must replace the love of submission and humility. The ideal of love of one's neighbour must be completely subordinated to the idea of national honour. The bonds of the Church, he says, have no higher value than those of nationality.

He claims that the doctrine of original sin is incomprehensible to a people of an unadulterated racial character, for in such a people there lives a firm faith in itself and in its will, which it realises to be its destiny. A permanent sense of sin is a concomitant of psychic bastardisation.

Nordic blood—the new faith that is the "Blood-Myth"—is a mystery that has overcome and displaced the old sacraments. Its defence means at the same time the defence of the divinity of mankind. It breathes the heroic spirit of fire into the free and reckless soul, which acts with inspired aimlessness, which refuses to submit to compulsion even from God, and whose aim is complete identity with itself. According to Rosenberg, this belief was already held by the German mystics, particularly Meister Eckehart, the Dominican prior, at the beginning of the fourteenth century. Eckehart taught that surrender to God was in truth the highest faith in ourselves. To keep this faith entire we must hold aloof from all others so that we may not receive impressions that trouble the serenity of our own being.

The love shown by Jesus Christ, by Meister Eckehart, and by the German front-line soldiers [1] who fell in the War is, according to Rosenberg, of the same kind. They were men who, conscious of their nobility of soul and of their forceful personality, sacrificed themselves as masters and not as slaves.

[1] *I.e.* those retrospectively Nazified, see p. 103.

A German people newly awakened to its Blood-Myth will not on Sundays gather round the figure of the Virgin Mary, but round statues of German soldier-heroes in their field-grey uniforms. And those who are predominantly nordic in outward appearance will lead the way. Thus the new faith will act also as a form of national selection, for the " re-nordification " of the German people, and will reveal the truth of the saying : " as a man is, so is his faith," thus refuting the doctrine of the Churches : " as a man's faith is, so is he." Universal love, humanity and charity will thus sink into insignificance, and cease to sap the Germanic power of resistance.

It is on this foundation that Rosenberg wishes to build the " German People's Church." In this Church the Old Testament is to be abolished, indeed the Reformation ought not, Rosenberg thinks, to have retained it as part of the Holy Scriptures. The crucifix might also vanish, for it is a symbol of outmoded teachings of the bondsman and the scapegoat. There will be only one compulsory article of faith : " There is nothing higher than the German people and its honour ! " So the German People's Church would embrace all congregations, whether they choose to retain the Catholic use or to adopt the Lutheran or any other form of service, or even to break entirely with Christianity and form themselves into a new community.

The call to abandon the old Churches is said to be directed, not to those who still cling to them and believe in them, but to youth, which the new national State claims unconditionally and exclusively as its own. Hence Rosenberg rejects freedom of instruction. For him creeds are not an end in themselves but a transient means wherewith to serve the Nationalist concept of life and the values of the Germanic character. It is not true, he says, that Christianity brought morality to Germany, but that Christianity owes its enduring values to the Germanic character, which is everlasting, and upon which all else must be modelled. Concepts that are opposed to this teaching are symptoms of a sickness of the people's soul,

which must be removed principally by "education" of the young. Victory is due to the Germanic character because it is eternal, for the will to culture is the will to power. In order to guarantee this victory, all opposition must be ruthlessly suppressed, and its organisation and political power destroyed.

Rosenberg's arguments show that positive Christianity means to the National Socialists the precise opposite of what it really is. The glad tidings that Christ brought substituted for the old dispensation, under which the Israelites were the chosen race, a new dispensation that rejects the ties of blood and exacts ties of faith. "The sin against faith" [1] is worse than "the sin against race." The greatness of this doctrine is seen once more to-day, for it demands active charity towards the descendants of those who once clamoured for Christ's crucifixion. Our neighbour is not only our fellow-countryman but, following the parable of the Good Samaritan,[1] any human being. National Socialism does not destroy the connection between Christianity and politics in order to enable the former to realise its spiritual nature more completely, but to destroy it and in its place to re-establish the Nation as a godhead. It denies that this could not satisfy the spiritual needs of the individual, and that the relationship between God and man was therefore modified when several nations combined to form world empires. Out of the legal tie between the nation and its citizens there grew a community of mind and spirit based on faith, morality and knowledge, which embraced the whole world, without respect to frontiers or difference of nationality. Rosenberg, moreover, misinterprets Meister Eckehart's mysticism, for Eckehart preached that *every* good man was born the son of God whom the Father had begotten from all eternity.

Merely to omit what does not lead to the desired result is indeed an easy way out. This is probably why, though his book is full of quotations, Rosenberg never

[1] Cardinal Faulhaber, *Adventspredigten : Judentum, Christentum, Germanentum* (*Advent Sermons, Jewry, Christianity, Germanism*), pp. 20, 24 and 95.

mentions St. Paul's [1] eulogy of love, but charges him [2] with the judaisation of Christianity, although H. S. Chamberlain, in whose footsteps he attempts to follow, describes St. Paul as un-Jewish.[3]

Religion must in the end become an inward personal experience. Rosenberg states in the introduction to his book that its basic idea came to him during the war, in 1917. But though he was physically fit and of military age while the Great War was raging, he has never worn a soldier's coat. How does this tally with his "inward experience"? If he had had experience of life at the front he would perhaps have realised that during the war already people became impatient with the Christian Churches because, divided by the barriers of nationality, they prayed for the victory of their own peoples. Nevertheless, the yearning for religion is stronger than ever, and Rosenberg's book therefore constitutes a great danger, for owing to its pseudo-scientific guise it is read with avidity by German students.

It is not within the scope of the present book to deal with Rosenberg's attacks on the organisation of the Christian Churches, particularly of the Roman Catholic Church and its ritual. Yet National Socialism obviously sets out to imitate Catholic methods for its own purposes and in its own way—in other words, it also attempts to control faith and conscience by means of the law.

Compare, for instance, the infallibility of the Pope, whose importance was raised by the pseudo-Isidorian decretals, with the position of the Führer, which rests on a pseudo-race-history. In place of the priesthood we have a minority consisting of the members of the Party or of its more favoured affiliations. In the Catholic Church we must consider tradition, among other things, as a source of

[1] 1 Corinthians xiii.

[2] *Op. cit.* pp. 75, 235, 457, 605.

[3] Houston Stewart Chamberlain, *Die Grundlagen des XIX. Jahrhunderts* (*The Foundations of the 19th Century*), 10th Ed., p. 694 (584).

law. So far as it springs from Christ and is regarded as transmitted by the Apostles, it is unalterable. National Socialism shows that, in spite of its short history, it is trying to build up a tradition and to give this the appearance of venerability. On certain days and on certain occasions the same ceremonies are performed with the use of the same words, always culminating in a "unique" speech by the Führer.

Ordination, under the canons of the Roman Catholic Church, is a sacrament, and confers on the recipient the irrevocable authority to perform such offices as fall within the degree of his ordination. This authority cannot be lost either by removal or by conviction of a criminal offence. The National Socialists severely criticise this rule, but they have secularised and intensified the idea that lies behind it. Membership of the Party may even be a protection against deposition or punishment.[1]

The control over books exercised by the Reich Chamber of Literature [2] brings to mind that of the College of Cardinals, the *Congregatio indicis librorum prohibitorum.*

National Socialism, however, overlooks the fact that the Roman Catholic Church takes into account the difference in the effect of its doctrine on different members of the same nation, due partly to intrinsic dissimilarity and partly to the march of time and difference of locality; and it does so by according to each member as *an individual* his God-given rights, which must be subject to no interference whatever by the community.[3] It therefore imposes on each individual the moral duty to discipline his soul with the utmost resolution.[4]

Closer examination shows that the Nazi imitations are purely mechanical and technical, and that, when measured by religious standards, they are puny things.

[1] See *n.* 3, p. 176, and pp. 286–7.

[2] See p. 248.

[3] Pope Pius XI., 14th March 1937. Encyclical, "With burning anxiety," paragraph 8.

[4] Cardinal C. Faulhaber (see *n.* 1, p. 320), *op. cit.* p. 116.

(*b*) *The German Christians :*

> " When people who are not even at one in their faith in Christ hold before your eyes the false but alluring picture of a German National Church, know that this is nothing but the negation of the one Church of Christ, a manifest failure to obey the precept laid upon the whole world for the propagation of the Word. . . . "[1]

These words apply not only to the mutual relations of the various tendencies within the German Christian movement, but also to the relations between it and Rosenberg's People's Church.

The German Christians emphasise the Lutheran influence on the future Reich Church, which is intended to include the Reformed congregations while safeguarding the latters' distinctive characteristics. Thus their aim is to usurp the place hitherto occupied by the Evangelical territorial Churches. They therefore leave unanswered the question how the Catholics and " pagans " can be made members of the Reich Church in accordance with Rosenberg's aims.

That is no doubt the reason why the German Christians, on Hitler's recommendation,[2] do not bear a name indicating their connection with National Socialism, though they are National Socialists. They could not bring religion into conformity with their political ideology by handing over its leadership to a Party organisation. Were Party members to be alienated simply because they reject all forms of Christianity or belong to a neo-pagan sect with Christian trimmings ? [3] On the other hand, they want the

[1] Pope Pius XI., see *n.* 3, p. 322, Encyclical, paragraph 5.

[2] Dr. Friedrich Wieneke, Cathedral Pastor at Soldin, *Die Glaubensbewegung " Deutsche Christen "* (*Faith Movement of German Christians*), p. 13.

[3] For instance the *Deutschreligion* of Professor Ernst Bergmann who published its 25 propositions in 1934 ; or the *Deutsche Gottschau* of the late General Ludendorff and his wife Mathilde Ludendorff, which the " German Christians " criticise for its similarity to the Pantheism of the Jewish philosopher, Spinoza, of all people ! (Wieneke, *Glaubensbewegung*, p. 9.)

credit for having saved Christianity from Bolshevism. They need the ancient and respected bastions of the Christian Churches for use, with modifications, in the reinforcement of their own positions and they want to eliminate any risk of these giving rise to qualms of conscience. So the German Christians appear on the surface to be an independent movement, whose emblem is a swastika imposed on the cross of Christ.[1] Their newly proclaimed gospel attracts proselytes to the Party; but in case of failure or tactical necessity, the Party can dissociate itself from the religious movement.

After Hitler had acceded to power, large numbers flocked to join the German Christian movement without worrying about its guiding lines or principles, in the hope that the Churches, which many people considered to have lost their vitality, would experience a renascence. Some of those who joined the movement did not subscribe to the Nazi political creed. Others did so whole-heartedly but, finding themselves unable for religious reasons to follow this new movement, opposed it—an attitude that did not yet necessarily constitute an infringement of Party discipline. These people, among whom are hundreds of clergymen, are torn by an inward conflict, for they regard it as a patriotic duty to give their loyalty to the new State, but cling spiritually to the Gospels and the Church. Thus before the end of 1933 the Bavarian group of German Christians retired in a body from the Reich Association. This example was followed by many members of the Württemberg group, among them a leading divine, Weber by name, together with more than three hundred other clergymen, who joined the "Clergy Emergency Union."

These developments were chiefly due to the leading group in the central office of the Reich organisation, under Joachim Hossenfelder, who, though later supplanted by Dr. Kinder, still exercised a decisive influence and favoured Dr. Krause's People's Church Group, which

[1] At the junction of the beams of the Christian Cross.

had come much into the public eye. Of the many other groups may be mentioned that of the " Thuringian German Christians," which developed from a purely geographical group into a " school of thought " within the movement, and now includes the churches of Thuringia, Lübeck, Bremen, Oldenburg and Mecklenburg. Their chief theological exponent is Siegfried Leffler of Weimar and their general secretary, Dr. Oberheid. The latter had undergone a sudden metamorphosis, turning from commercial traveller to theologian. Thanks to his extreme Nazi views he succeeded in 1933 in passing an abridged theological examination, and was appointed to a Bishopric in the Rhineland, where he tended his flock in the garb of a Storm Trooper. The flock, however, objected to him as their shepherd, and he was eventually provided with a new post as General Secretary.

The East Prussian Group produced the Reich Bishop, Ludwig Müller.

It is unnecessary to consider in detail the " ten guiding lines," and the " ten principles " [1] of the " German Christians." They amount to the usual political demands : the Führer principle, the Nazification of State and Church, and the introduction of the " aryan paragraph " ; and they call for the establishment of a new Reich Church in keeping with the national character, and for the " purging " of the Bible.

The question whether non-aryan Christians are to belong to the projected Evangelical Reich Church or whether—as the German Christians wish—the preaching of the gospel among those of foreign race shall be a matter for foreign missions, is, owing to the small number involved, of no importance in Germany. Since the majority of races that were at first declared non-aryan, such as the Finns, Hungarians, Arabs, Japanese, etc., are looked upon as of " cognate " blood, the Jews appear to be the only one to consider ; and since only a very few of them are, or wish to

[1] Joachim Hossenfender, *Unser Kampf* (*Our Struggle*), pp. 6, 32, and Wieneke, *n.* 2, p. 323, *op. cit.* pp. 16 and 33.

be, baptized, the number of non-aryans whose inclusion is not desired is very small. The reasons why the aryan paragraph has, nevertheless, acquired such extreme importance in the Church dispute are first that the Church, for reasons deeply rooted in its faith, must reject it and the misrepresentation of the figure of Jesus that it involves, and second that the " People's State " regards a " People's Religion " as a necessity.

I think what is especially interesting here is the manner in which the German Christians, as Evangelical theologians, try to justify the new ecclesiastical law by reference to the Christian faith. The following three attempts may be selected from a flood of writings :

The first attempt [1] assumes that the German Christians see in Hitler not only a leader of a newly arisen nation, but a prophet given to the Church by God. That obliges the Church to re-create itself in a national community of belief. Strangely enough the origin of the nations was, in their opinion, the result of the confusion of tongues at the destruction of the Tower of Babel.[2] By this the Creation was finally completed ; and it was not undone by the events at Whitsuntide, which need to be rightly understood. The Holy Ghost inspired the Apostles to speak to every man in his own language. Thus they received the divine command to preach the Gospel to heathen peoples in their own tongues. The word of God, which was spoken in one tongue, must be preached " in accordance with race " to the nations, who are divided by their languages. Hence arise the following distinctions : God, the Saviour and the Gospel are not racial conceptions ; what are racial conceptions are the preaching of the Gospel, faith and the Church. The difficulty of Galatians iii. 28, is got over by the reminder that St. Paul includes both men and women among those who are " all one in Christ Jesus," a sign that

[1] Dr. Ernst Daum, Regional Leader of the German Christians in Lower Franconia, *Deutsche Christen : Unser Bekennen und Wollen (German Christians : Our Creed and Our Will)*, 1934, pp. 6, 7, 11, 13, 15, 19, 20, 23, 24, 26, 39, 40, 49.

[2] Gen. xi.

he regarded the distinctions established at the Creation as still in force. German race, the German soul, has not produced a biblical God and Saviour or a Gospel. Christ is the Redeemer of the German people. The members of a nation, however, have no duty but to their nation, and it is only the nation as a whole that has a duty to humanity. Before the nations can carry out the tasks of humanity, they must be healthy, strong and conscious of their nationhood. God has kept the German people for a task to benefit mankind, before which it must tremble. All the great thoughts of humanity have for centuries come out of Germany. The phrase " the world shall recover by virtue of German character " [1] has real significance.

The second attempt [2] provides a simpler solution. This asserts that a special connection exists between Christ and the German people. Christ said : " Therefore say I unto you, the Kingdom of God shall be taken from you and given to a nation bringing forth the fruits thereof." [3] The German people has, therefore, a world mission to fulfil, which was laid upon it centuries ago. Now, after two thousand years, it has been revealed to it, through Hitler, that it is to be the " counter-nation " of the Jews and to serve as the redeemers of the world, of which service, hitherto, no nation on earth has been found worthy.

But it is the former Reich Bishop, Ludwig Müller,[4] to whom the palm must be awarded. From him comes the third attempt, which provides not a translation but a Germanisation of the Sermon on the Mount for those " to whom the language of the Bible has become alien, in order that they may once more understand God's Word with their hearts." This work has robbed the author of the last shreds of his reputation, even among those who for the sake of peace were prepared to accept much.

[1] *Am deutschen Wesen soll die Welt genesen.*

[2] Siegfried Leffler, *Christus im dritten Reich der Deutschen* (*Christ in the Third Reich*), 1935–36, pp. 22, 23, 29, 31, 33, 37, 38, 51, 143.

[3] St. Matthew xxi., 43.

[4] *Deutsche Gottesworte*, 1936, Preface and p. 38.

To indicate the character of this Germanisation, I quote three examples :

St. Matthew v. 9 :

Blessed are the peacemakers for they shall be called the Children of God.

Müller's *Gottesworte*, p. 9 :

Happy are they who keep peace with their fellow-countrymen ; they do God's Will.

St. Matthew v. 25 :

Agree with thine adversary quickly, whiles thou art in the way with him ; lest at any time the adversary deliver thee to the judge. . . .

Müller's *Gottesworte*, p. 13 :

Do not be irreconcilable with your fellow-countryman with whom you are at enmity. Do not carry the quarrel so far that understanding and reconciliation become impossible.

St. Matthew v. 43, 44 :

Ye have heard that it hath been said, thou shalt love thy neighbour and hate thine enemy.

But I say unto you, love your enemies. . . .

Müller's *Gottesworte*, p. 17 :

A word of old says : " Love your friend and hate your enemy." I say to you : " If you would be God's children you must take up a different attitude to your fellow-countrymen and your comrades. . . . "

In his Epilogue Müller remarks that whether Christ was a Jew or not, Christianity has developed in its struggle against Judaism, so that Christian and Jew are opposed to each other like fire and water. It is, therefore, not un-Christian to treat Jews as enemies.

So Müller uses the spiritual conflict that Jesus and his Jewish disciples waged against his Jewish opponents and their racial arrogance, as evidence in favour of national and racial hatred.

The German Christians also look forward to a national Church, including the Catholics as well as all other Germans, as their ultimate aim.[1]

[1] Leffler (see *n.* 2, p. 327), *op. cit.* pp. 92, 98, 138 ; Statements of Müller in the summer of 1938.

C. What the Struggle is about

(*a*) *The Confession of Faith :*

No true Christian can submit to the repudiation of his faith as " negative " Christianity and its substitution by the " positive " Christianity of the Nazis. Inevitably, therefore, the conflict between religion and politics began the moment the Hitler Government carried its programme into the sphere of religion. In accordance with their usual tactics they proclaim that their own attacks are really self-defence—that it is they themselves who have been illegally attacked ; and they blame the Churches for meddling with politics instead of minding their own business, which is religion.

In order to make it appear that the right to practise their faith in freedom, which was guaranteed to the Churches by the Concordats, had not been violated, the Nazis adopted the following manœuvre :

At the beginning of the new Constitution of the German Evangelical Church was printed the following statement.[1]

> " The inviolable foundation of the German Evangelical Church is the gospel of Jesus Christ as communicated to us in the Holy Scriptures and brought to light again in the creeds of the Reformation. The powers that the Church requires for its mission are hereby established and defined."

By the Reich Concordat[2] the Vatican prohibited priests and office-holders of the Catholic Church in Germany from joining political parties or indulging in activities on their behalf. But this prohibition implies " no interference with the preaching and interpretation, as duty imposes, of the dogmatic and moral doctrines and principles of the Church." [3] The Reich Government is pledged to make the same arrangement for the non-Catholic confessions.[3]

[1] Section 1, Article I., of the Constitution of 11th July 1933 ; Law of 14th July 1933.

[2] 20th July 1933, Article 32.

[3] Final Protocol of 20th July 1933 to the Reich Concordat, to Article 32.

Soon after the conclusion of the Concordat the Vatican pointed out that the Reich had not honoured its pledge. This was true, for the German Christians had not been forbidden to belong to a political party or to carry on political activities. The Nazis counter this charge by stating that they do not constitute a party in the normal political sense, but an "entirely new movement" proclaiming a "unique ideology, and one that is subversive of all that has hitherto prevailed"; and this ideology, which governs both people and State, the Churches also must accept. They claim that the Vatican, by signing the Concordat, also committed itself to the support of the National Socialist code; and that political misuse of the pulpit, and the secrecy of the confessional, have been abolished once for all in Germany.

International law can furnish many examples of States with widely differing constitutions making treaties with each other. The conclusion of a treaty implies, it is true, recognition of power, but never a mutual approval of the parties' internal political régime. The argument of the Nazis, therefore, will not hold water. It is based on the same reasoning as the argument that counsel for the defence of an anti-Nazi, who is innocent in law of any crime, must necessarily be an enemy of the Government. The argument also discloses the ulterior motive that actuated the Third Reich when it concluded the Reich Concordat: it imagined that it would strengthen its position in foreign affairs if its first treaty was with the sovereign of the oldest and most venerable power on earth, well knowing that it retained in its hands the means of twisting it to its own purposes.

In spite of many grave doubts, the Curia acceded to Germany's desire that the Concordat should be concluded, doing so in the interests of peace and the Church's mission of salvation.[1] For the same reason it has so far restricted itself to asserting its rights under the Concordats, ignoring for the time its powers [2] under the legal constitution of the Catholic Church.

[1] See *n.* 3, p. 322. Encyclical, paragraph 1. [2] See p. 302.

Can a priest, Catholic or Evangelical, keep silence when a " movement " attempts to shake the foundations of the Churches ? Those who cannot see below the surface and allow themselves to be hoodwinked by skilful propaganda ask why the clergy meddle with politics, why they do not obey the temporal law, and why they disturb the harmony of the Church, which is evidently desired by the people.

Can a doctor heal a gaping wound with sticking-plaster ? Of what use is a figure of speech unless the idea is clearly revealed ? If the State, under the cloak of politics or " ideology," invades the sphere of religious freedom, which it has itself guaranteed, then the Church must defend itself. The Christian Churches would destroy themselves if they permitted the dogma of race again to oust the dogma of faith. They have no objection to honest racial research, as long as love of one's own race does not lead to hatred of others and hostility to Christianity.[1] They cannot, however, permit the mystic faith of nordic Germanic blood to destroy the universal doctrine of God and arbitrarily to subordinate to itself everything in the domain of metaphysics and ethics. They must oppose the custom of tearing individual passages from the Bible, and the interpretation of them without reference to the context and to the Gospel as a whole.[2] This procedure chiefly serves to depict only the " heroic " side of Jesus ; whereas for the Churches there is another, the passive side : the power to suffer, which calls for infinite patience and all-forgiving love, and therefore more moral strength and greatness than the power to act.[3]

The man who shuts his eyes to all these things fails to understand the full implications of this neo-German war upon the Churches. The Churches are to be destroyed because they stand in the way of totalitarianism. Apparently the Nazis have over-estimated their power and under-

[1] Cardinal Faulhaber, see *n.* 1, p. 320.
[2] *Ibid.* see *n.* 1, p. 320, *op. cit.* p. 94.
[3] *Ibid.* see *n.* 1, p. 320, *op. cit.* p. 47.

estimated the spiritual and moral resources of Christianity. The tricks and dodges of the everyday political struggle are a useful weapon for the People's Führer-State.

Is the highly personal sphere of religious conviction to be regulated by plebiscites, after the manner of political affairs?

The government has no hesitation in encouraging people to leave the Churches. This is done by means of a declaration before the lower courts under a law passed by the Republic [1] for the protection of freedom of conscience. Here too, therefore, the change in the régime has resulted in a guarantee of freedom being used as a means of coercion. Any official or member of the SS who does not make this declaration is liable to find himself seriously handicapped. In the autumn of 1938 certain Austrian trade organisations proudly announced, after they had been brought into conformity with Nazi ideology, that they were "purged of Catholicism." All their members had "voluntarily" left the Church.

The promised freedom of intercourse between the Vatican, and the bishops, priests, and other members of the Catholic Church in Germany, has been stopped in the same way as that between the bishops and other Church authorities and the congregations.[2] Church newspapers are, contrary to the terms of the Concordat, under the strictest censorship. Even papal communications, pastoral letters and so forth may not be freely published and brought to the notice of the congregations in the usual manner.[2]

The bishops are charged with violating their oath of allegiance, although this was sworn on the Bible.[3] They believe that by following Christian doctrine they will defend their German Fatherland from the ills that threaten it. But the Reich regards this as prejudicial to itself, and interprets every utterance of the Pope on behalf of other nations as directed against Germany.

[1] Law of 30th November 1920.
[2] Article 4 of the Reich Concordat of 20th July 1933.
[3] Article 16 of the Reich Concordat of 20th July 1933.

In 1938 the Evangelical clergy were required to take the oath of allegiance to the Führer. Regulations were also issued restricting the right of recalcitrant clergymen to preach, a matter to which we shall revert later.

(*b*) *Schools and the Education of Youth :*

The General Superintendent of the Kurmark,[1] Dr. Dibelius, published in March 1937 an open letter to Herr Kerrl, Reich Minister of Ecclesiastical Affairs, the distribution of which the Gestapo tried to prevent. In it Dr. Dibelius asked who it was that should change his teaching, seeing that in the Scripture lesson in the morning, the children are taught that the Bible is God's Word, announced to us in the Old and New Testaments, and in the afternoon that for German youth there is only one bible—Hitler's *Mein Kampf*. The Church, he said, did not wish to be a State within the State. But the National-Socialist State wished to interfere with the Church and force upon it certain dogmas and certain sermons. There lay the root of the whole Church quarrel, and this would never be settled until the State acknowledged the limits of its power. Hitler's State could rely on the members of the Evangelical Church, but the moment it attempted itself to become a Church, and claimed authority over the human soul, then, in God's name, and in allegiance to Luther, they would offer righteous resistance to it.

No reply was vouchsafed to Dr. Dibelius's letter. "Unconditionally and without exception,"[2] the State gathers to itself the youth of the country both in and out of school. If conditions are occasionally mitigated, this is the result solely of internal or external political tension.

Under the Weimar Republic, the education of children was carried on in secular, or in denominational or undenominational schools.[3] In the two latter, religion was a normal

[1] The greater part of the former Mark of Brandenburg.

[2] See p. 319.

[3] Articles 146 and 149 of the Weimar Constitution; Articles 21–24 of the Reich Concordat of 20th July 1933.

subject, and had to be given by a teacher of the appropriate denomination, and in conjunction with the Church.[1] At the request of the parents or guardians of children entitled to instruction, elementary schools of a particular denomination had to be established in their parish or municipality; and in these no teachers but those of the appropriate denomination might be employed.[2]

The Hitler régime lulled all the Christian Churches into the belief that it had no intention of reducing their influence in the education of youth, and even entered into agreements with the Vatican supplementing those already in existence.[3] In pursuance of this ostensibly pro-Christian policy, it also abolished the secular schools in Prussia at Easter 1933, and introduced religious instruction as a normal subject in vocational and continuation schools.

The *Jugendweihen* (ceremonies for the "dedication" of youth) of the Free Thinkers' organisations, which took the place of confirmation in the Evangelical Church and the first communion in the Catholic Church, were no longer permitted. Similar regulations were issued in Bavaria, Thuringia, and Saxony. Whether because the Churches did not show sufficient gratitude for these measures against the "bolshevising" of youth, or because they were in any case fated to feel the heavy hand of the State, the Gestapo closed[4] not only the offices of the German Catholics' Peace Union and similar organisations but also those of the Catholic Youth, the *Kreuzschar* (Host of the Cross), the *Sturmschar* (Storm Host) and other youth organisations. Their funds were confiscated on account of "activities hostile to the State" and resistance to the "natural absorption of the Catholic people into national Germany."

In view of the Reich Concordat[5] Hitler cancelled these measures. So far as the associations referred to served purely religious, cultural, or charitable ends, he promised

[1] Articles 146 and 149 of the Weimar Constitution; Articles 21–4 of the Reich Concordat of 20th July 1933.

[2] Articles 146 and 149 of the Weimar Constitution.

[3] Articles 21–24 of the Reich Concordat of 20th July 1933.

[4] On 1st July 1933.

[5] 20th July 1933.

that their existence as separate organisations should be guaranteed ; and under these conditions their absorption in State organisations was permissible.[1]

Baldur von Schirach, Reich Youth Leader of the Party, had taken over the management of the Reich Committee of German Youth Associations.[2] To nip any opposition in the bud he had all the offices of the committee and those of the Reich Union for German Youth Hostels at Hilgenbach, Westphalia, occupied by the SA and the Hitler Youth.[3] Under the protection of the Government he also assumed the leadership of this association. The attitude of the Hitler Youth is hostile to the Church. For this reason and also because it occupies too much of the children's free time, Christian parents regard it with some lack of appreciation. Many mothers complain that their boys have lost their natural cheerfulness, and that they are deliberately trained to assume an air of pugnacity. The carrying of arms, and particularly of a knife at the belt, can only be prohibited in the school buildings. The national inspectorate of schools works in close conjunction with the Hitler Youth.[4] Further there was an attempt—more or less latent until the 1936 Olympic Games—to bring all sporting Youth Associations under the control of the Reichs Sport Leader [5] and the Hitler Youth.

Frick, the Minister of the Interior, assured the Evangelical and Catholic Youth Associations, which were very anxious at the state of affairs, that their individuality would be preserved.[6] This meant that they were not to be forcibly absorbed in a parent organisation, and the State undertook to restrict itself to the supervision necessary to ensure that the obligations from which no citizen was exempt were met. Because the Evangelical Youth Movement was not to be absorbed, von Schirach made it set up a provisional Evangelical Reich Youth Chamber. Reich Bishop Müller

[1] Article 31 of the Reich Concordat.

[2] On 5th April 1933. [3] On 12th April 1933.

[4] *E.g.* Edict of Rust, Reich Commissioner for the Prussian Ministry of Culture of 28th June 1933.

[5] See p. 237. [6] October 1933.

had expressly promised the Leaders' Council of the Evangelical Youth that he would do nothing to have it absorbed without first giving it an opportunity to state its point of view. It came, therefore, as a thunderbolt when, at Christmas 1933, he published an agreement that he had secretly made with von Schirach,[1] which constituted a direct breach of his promise. Under this agreement the Evangelical Youth was absorbed by the Hitler Youth; and from then onwards its members had to wear the uniform of that organisation and give up to it the greater part of their spare time.

All denominational Youth organisations were forbidden on pain of punishment to indulge in any activity not of an exclusively religious or ecclesiastical nature. This meant that they were prohibited from practising any kind of sport, going for hiking and camping holidays, wearing uniforms or badges, or carrying flags or pennons.[2] When singing songs they had to observe the rules laid down by the Reich Minister of Ecclesiastical Affairs.[3]

The Hitler Youth was thus placed in such a privileged position in all matters concerned with the young people's activities, that when ultimately a law was passed [4] by which the whole youth of Germany was gathered into the Hitler Youth, which together with the home and the school is responsible for educating the rising generation in the spirit of National Socialism, it merely confirmed a condition that already existed. Von Schirach is now Youth Leader of the German Reich in addition to his Party functions.[4] [5] Henceforth, therefore, even the Catholic Youth Associations are subsidiary to the Hitler Youth, their parent organisation. Any that show too much resistance to the new educational principles are, like the Evangelical organisations, dissolved and their funds transferred to the Hitler Youth.

Although the Reich Government had solemnly promised that nothing would be demanded of the members of Church

[1] 23rd December 1933.
[2] Prussian Police Regulations of the Chief of the Gestapo, 23rd July 1935.
[3] See *n.* 2, p. 254. [4] 1st December 1936. [5] See p. 174.

Youth organisations that was not consistent with their religious and moral convictions and duties, and although they were granted the unrestricted right to observe Sundays and Feast Days,[1] yet the children in the Hitler Youth were jeered at when they wished to stay away from some function on account of their religious observances.

I know of cases in which children of Evangelical families, in their year of preparation for confirmation, were quite unnecessarily called away from meetings that the clergymen sometimes arranged in addition to the confirmation classes, and summoned to an immediate roll call.

The mischievous influence of the Hitler Youth on the religious training of children was further demonstrated to me by a personal experience at Easter, 1934. I was present at the confirmation of a boy I had known for many years. By order of his Youth Sub-leader (*Unterbannführer*) he had to wear the uniform of the Hitler Youth for the ceremony. The service was conducted by a clergyman who had joined the German Christians. The Youth Sub-leader was present at the family party that followed and reprimanded the boy—who had been moved by the solemnity of the moment—for failing to give the Hitler salute at the altar. The Youth Sub-leader went on to poke fun at the boy, saying, that since he had now finished with this "Christian bosh," his real training as a German boy could begin. At that I could not refrain from saying that I thought it highly improper to make a mockery of confirmation, that one might accept or reject the Christian faith, but to train up a child in it and then reject it in his presence was inexcusable. Without thinking, I went up to the boy and stroked his head, whereupon he broke into a flood of bitter tears, sobbing as only a child can sob when he has been wounded in the depths of his soul.

As they grow older, the children are subjected more and more closely to the influence of secular education; and once they have reached the age of fourteen, their "religious

[1] *E.g.* Article 31, last paragraph, Reich Concordat, 20th July 1933.

majority,[1] their parents can exercise no countervailing influence.

In case of differences of opinion between parents and the Hitler Youth, the schools are coming more and more to take the side of the latter. Since in all schools the teachers are employees of the State, it follows that they are subject to the law concerning Civil Servants, and so are good Nazis.[2] Furthermore all teachers and professors, from the kindergarten to the universities, are included in the "Teachers' Front," which is formed[3] by the Nazi Teachers' Federation.[4] This serves also as a collective organisation covering all the former teachers' associations, the foundation of new associations being forbidden.[3] It also controls and advises the German Educational Union.[5]

The Reich Government has given up any intention of allowing the Churches the share that was promised to them by the Concordat, and by Hitler in his Reichstag speech of 23rd March 1933,[6] in the appointment of teachers of religion and the settlement of the curriculum for religious instruction. The State lays down the "spirit of the Christian law of faith and morals, from which the training of youth in a patriotic, civic and social sense of duty should be derived."[7] Its chief aim is the abolition of the Old Testament as a school subject, and the editing of the New Testament. The mind of youth is to be formed by the nordic Germanic sagas instead of the Old Testament "cattle dealers' tales" with their "swindle "and "morality based on reward."[8] Hitherto children learnt the old Germanic sagas by reading them in their German language lessons. The Catholic and Evangelical Churches agree that

[1] Law of 15th July 1921. [2] See p. 183.

[3] Joint order of the Minister of the Interior, Frick, the Führer's Deputy, Hess, the Reich Minister of Economics, and the head of the Reich Organisation of the National-Socialist Party, of 8th December 1933. See also *n.* 4, p. 237.

[4] See p. 174.

[5] Proclamation of the Minister of the Interior 12th December 1933.

[6] See *n.* 2, p. 294.

[7] Breach of Article 21 of the Reich Concordat.

[8] Rosenberg, *op. cit.* p. 614.

it is absolutely necessary to retain the Old Testament as the basis of religious instruction, but with the New Testament as the principal subject.

> "When anyone comes to me and says he does good purely for its own sake, and without expecting a reward," says Cardinal Faulhaber,[1] "then I say to him: Friend, you are either a saint, one of very few, or a hypocrite, and deceive yourself. Are those who object to the Old Testament system of promises of reward really so far removed from all desire for it that they never expect recognition of work well done, increase in salary, promotion or any other kind of reward? . . . A moral doctrine laid down to meet the needs of *all* men must allow not only for the most perfect, but also for the less perfect motives."

The many pagan gods that form the basis of the world of nordic sagas are no substitute for the religious foundations of the Testaments. It is the same with the tales of heroes as with namby-pamby moral stories: neither permeates the heart and mind of childhood as thoroughly as the Church's doctrine of an omniscient God and eternal punishment, which the experience of criminologists shows to be the surest preventative of delinquency in later life.[2]

My wife has shown me how cautious we must be in criticising the Bible. She is not a pious churchgoer in the ordinary sense. But in the worst hours, during my imprisonment, when she could no longer bear the sympathy of friends, she sought in despair for consolation among our books, and found it in the Psalms and other passages of the Old and New Testaments. Perhaps before we regain our understanding of the revelations to be found in the Old Testament we shall have to pass through trials graver still, which, however, will cause us to think both hard and long.

The Reich Government rid itself of the undesired denominational schools either by closing them or by arbitrarily changing the teaching staff. It overcame the

[1] See *n.* 1, p. 320, *op. cit.* pp. 42 and 43.
[2] Heindl (see *n.* 1, p. 259), *op. cit.* p. 92, *n.* 1.

legal objections to the closing of the schools by making the parents give "voluntary" notice to the denominational schools that their children were leaving, and to the newly reopened secular schools that they wished them to go there. The Pope declared in the spring of 1937 that this notice was coercive and entirely illegal.[1]

In Bavaria alone, eighty-two Catholic schools had up to February 1938 been closed and fifteen thousand children deprived of Catholic religious instruction.[2] The efforts of Cardinal Faulhaber and the other Catholic bishops to reverse this breach of the Concordat were in vain. On the contrary, the process of converting all denominational schools in Bavaria, which included 780,000 children, into secular schools for Nazi Youth education, was already complete in October 1938. Developments in the other territories of the Reich were similar. The State prevented the printing of encyclicals and pastoral letters dealing with these matters. The State and the Party denied the charge that they were persecuting Christians, pointing out that they had not yet burned any churches.

(*c*) *The Crucifix:*

The transformation of the schools is not effected everywhere with the smoothness the Nazis would like to see. In the Catholic parts of the country it has led to a highly dramatic struggle over the crucifix. This began in 1936 and 1937 in Münsterland, Westphalia, in Oldenburg and in the Rhineland. The Press is not allowed to report it, and all pronouncements by the Church authorities are suppressed.

First, the Nazis tried, on the occasion of "national" celebrations, to remove the crucifixes from the schools. The resentment of the public against these "stormers of the Cross," which was expressed at mass meetings, was so entirely spontaneous, that even the terror exercised by the

[1] See *n.* 3, p. 322.

[2] Announcement from the pulpit by Cardinal Faulhaber, Munich, 13th February 1938.

Gestapo and the SS was paralysed, particularly in the larger towns.

Then they changed their methods and confined their attention to villages, where owing to the smallness of the population their methods of intimidation would be more successful. In some of these, Nazi teachers, whom in the process of forcing the elementary schools into line the authorities, without a thought for the Reich Concordat, had substituted for the Catholic teachers, themselves removed the crucifix from the schoolroom. The outraged people unanimously joined in a school-strike and firmly refused to send their children back to school until the crucifix was restored.

The Archbishop of Münster, Count von Galen, issued a pastoral letter in support of the people's attitude. The Gestapo gave orders that it was not to be circulated or read in public. Knowing that this prohibition was an infringement of the Concordat, the village priests read the pastoral letter from their pulpits. This they did to give their congregations spiritual strength if they were already involved in a school-strike, or to prepare them for possible attacks by the " Cross-stormers," and let them know that up to then defensive action had been unanimous and generally successful. Many priests and chaplains were thereupon arrested and thrown into prison.

In some cases the outraged people assembled outside the schoolhouse and called upon the teacher to restore the crucifix to its place. The teacher gave the alarm by telephone to the local detachment of the Black Guards, who hurried over in cars from the nearest town. All the men of the village were herded into the playground of the school and cross-examined for the purpose of ascertaining who had incited the crowd to collect in front of the school. Revolvers were brandished ; but this proved unavailing, and so all the men were carried off to prison to answer a charge of disturbing the peace.

In one of the larger villages, with a correspondingly larger school, the headmaster had substituted pictures of

Hitler for the crucifixes in all the classrooms. The next day, by secret arrangement, the parents gathered outside the school, and sent in a deputation to ask for an interview with the headmaster. The latter called in the Storm Troopers from the neighbouring villages, who on arrival marched into the playground. They instructed the meeting to disperse, and, when faced with refusal, ordered any government or municipal officials present to leave immediately. There was no response. The parents, speaking in chorus, demanded the restoration of the crucifixes, and then started singing hymns. Meanwhile the headmaster had also assembled a crowd of the Hitler Youth in the playground, and told them to sing National Socialist songs to drown the voices of the parents. When he found that even this was not enough, he made the boys beat their drums. Finally an SS detachment and men of the Gestapo arrived in cars and attacked the crowd, which broke into *Deutschland über alles*. The officials who had taken part in this demonstration were dismissed. The crucifixes were never replaced, although applications for this to be done were made to higher government authorities. No priests were permitted to give religious instruction at this school.

Especially severe measures were taken in villages inhabited by Catholic workmen, for the authorities suspected, not without reason, that there was some connection between the school-strike and a ca' canny movement among the workmen, which showed itself, among other things, in reduced output of coal.

(*d*) *Marriage :*

German civil law does not, in principle, recognise any form of marriage except that before a registrar. Marriage in church, after the civil ceremony, is a matter for the discretion of the married couple.[1] In certain exceptional cases, Church marriage may be celebrated by the clergyman before the civil marriage.[2] In Austria, before its inclusion

[1] Paragraph 1588 of the Civil Code.
[2] Article 26 of the Reich Concordat.

in the Reich, the marriage of Catholics was exclusively a matter for the Church. The reluctance of the Catholic Church to accept obligatory civil marriage, which was introduced for all sections of the population after the annexation, is understandable ; but it is perhaps not too great a hardship for the Church.

In all matters concerning marriage the Christian Churches and the State worked together in harmony so long as the civil code, in its attitude to such things as obstacles to marriage and the rights and duties of the partners, was based on moral and religious considerations.

The Christian Churches were bound to adopt an antagonistic attitude when the Reich prohibited marriage between persons of German and Jewish blood, including in certain circumstances even those in which both parties confessed the Christian faith or were prepared to have their children brought up as Christians,[1] and also when the State began to encourage the dissolution of such mixed marriages.

Nor can the Churches approve measures endangering matrimonial harmony and the future of the children merely for the purpose of ascertaining their race in the interests of the State.

Hitherto it has been the right of the man to decide whether he wished to dispute the legitimacy of a child borne by his wife. If he did not do so within one year from the date of birth, the child was his legal issue.[2] Now the Public Prosecutor can dispute the legitimacy of a child even after the expiration of one year, if it has not been previously disputed by the husband.[3]

In accordance with the principles of Catholic and Evangelical ecclesiastical law, the German Civil Code prohibited, among other things, the marriage of persons related by marriage in the direct line or of persons one of

[1] Law for the protection of German blood and German honour of 15th September 1935.

[2] Paragraphs 1593 and 1594 of the Civil Code.

[3] Paragraph 5 of the Law concerning the amendment of and supplement to the Legal Regulations concerning the Family, etc., of 12th April 1938.

whom had had sexual relations with the parents, grandparents or progeny of the other.[1] [2] National Socialism has removed the latter obstacle to marriage entirely, and permits the former to be overridden with the sanction of the president of the district court.[3] Even to those who hold the most liberal views it is a moral necessity that the relations between parents, children, parents-in-law, children-in-law, step-parents and step-children should not be disturbed by the sexual impulse. Even the legal possibility that a father-in-law can marry his daughter-in-law or a step-mother her step-son, and so forth, has a disturbing effect. And the idea that there is no obstacle to a grandfather marrying his grandson's mistress is repellent.

To the Nazi State, marriage is not a culture-promoting community of two persons, who have agreed to share life together, but merely a means of propagation. The presidents of the district courts are therefore instructed not to grant exemption from an impediment to marriage when the man is substantially younger than the woman.[4] Further the State proclaims, with unnecessary clarity and emphasis, that refusal to procreate children constitutes special grounds for dissolution of marriage,[5] although under the old law failure to consummate it was already ground for dissolution.[6] In this connection the practice of sterilisation, introduced by the National Socialists, also plays a part.[7]

The abolition of judicial separation as an alternative to divorce also serves the cause of propagation. It was introduced under the Empire in imitation of the " Separa-

[1] *Impedimentum affinitatis legitimae et illegitimae.*

[2] Paragraph 1310 of the Civil Code.

[3] Paragraphs 7 and 84 of the Law for the co-ordination of the Laws of Marriage, Divorce, etc., of 6th July 1938 ; compare also Paragraph 1 of the Law of 12th April 1938 now repealed (*n.* 3, p. 343).

[4] Paragraph 4 of the Administrative and Supplementary Decree of 27th July 1938, corresponding to Paragraph 2, clause 2, of the previous Administrative Decree of 23rd April 1938.

[5] Paragraph 48 of the Law of 6th July 1938.

[6] Paragraph 1568 of the Civil Code.

[7] Paragraph 53 of the Law of 6th July 1938 ; see also *n.* 2, p. 46.

tion from bed and board" of Roman Catholic canon law,[1] and retained by the Republic.[2] Each partner could demand divorce so long as conjugal rights had not actually been resumed. The Third Reich refuses to tolerate such a state of affairs, which is normally due to serious psychological factors. Henceforth there is no judicial separation consonant with the continuance of the marriage.[3]

(e) *New Generation of Clergy:*

The Reich is under an obligation to allow the continuance at certain universities of the faculty of Theology, both Catholic and Evangelical, in order to assure to the Churches the proper education of their priests; and the Church authorities are given the requisite power for this purpose.[4] For the training of priests, the Catholic Church has the right to establish colleges, seminaries, and hostels, which are dependent upon the Church authorities if no State subsidies are asked for.[5]

School teachers who give religious instruction must be especially trained with the co-operation of the Churches.[6]

Church property, whether it is for the purpose of divine service or not, is safeguarded by the State; and it may not be devoted to other purposes against the will of the Churches.[7]

The Churches are empowered to levy rates on their members,[8] which are collected by the Reich together with the State taxes and handed over to the Church authorities.

The State grants to the Catholic and Evangelical

[1] *Separatio quoad torum et mensam.*

[2] Paragraphs 1575 and 1576 of the Civil Code.

[3] Paragraphs 46 *et. seq.* and 84 of the Law of 6th July 1938.

[4] Articles 2 and 19 of the Reich Concordat of 20th July 1933. Article 12 and final protocol to Article 12 of the Prussian Catholic Concordat of 14th June 1929. Article 11 and final protocol to Article 11 of Prussian Evangelical Concordat of 11th May 1931.

[5] Article 20 of the Reich Concordat.

[6] *E.g.* Article 24 of the Reich Concordat.

[7] Article 17 of the Reich Concordat; Article 5 of the Prussian Catholic Concordat; Article 6 of the Prussian Evangelical Concordat.

[8] Final protocol to Article 13 of the Reich Concordat; Final protocol to Article 13, clause 2, of the Prussian Evangelical Concordat.

Churches certain annual endowments. These have their roots in history.[1]

The Reich has reduced the number of the theological faculties, and asserts that in thus restricting their scope it has not violated its promise to permit their continuance. As regards the supply of priests, the Catholic Church is less severely hit than the Evangelical. In the former, the State does not meddle to any great extent until the priest is ordained and comes into contact with the congregations, whereas in the latter it interferes ruthlessly, and without regard to its obligations under the Concordat, even during the period of training.

Rust, the Reich and Prussian Minister of Education, who is a Nazi and a German Christian, has given orders that all training colleges for candidates wishing to be ordained in the "Confessional Church" shall be closed, and has forbidden it to hold courses, lectures, examinations, or ordinations. The students were informed that they would be expelled from the universities if they had anything to do with the Confessional Church. In this way the State proposes to secure, at least in the Evangelical Church, a future generation of clergy who will refuse to christen or marry persons of "Jewish blood," and will help forward the completion of the totalitarian State.

Since the Reich encourages the appointment of German Christians to all important posts in the Evangelical Church, there is little obstacle to its usurpation of Church property, since conveyance by legal procedure is unnecessary. This cannot be done so easily with the property of the Catholic Church, though attempts have already been made. Thus, parts of the famous Franciscan monastery near Salzburg have been commandeered for the purposes of the Gestapo, and the protests of the Catholic Church ignored.

We shall consider in another connection the machinations of the Reich for bringing the Churches to heel by means of financial pressure.

[1] Article 4 of the Prussian Catholic Concordat; Article 5 of the Prussian Evangelical Concordat.

D. The Phases of the Struggle

(*a*) *Up to the Signing of the Reich Concordat and the Establishment of the German Evangelical Church :*

The Christian Churches, having regard particularly to Hitler's assurances in his Reichstag speech of 23rd March 1933,[1] adopted a benevolent attitude towards the new government. The Fulda Bishops' Conference expressed the opinion in a pastoral letter [2] that in view of the declarations of the Chancellor they were confident that the Church's previous warnings and prohibitions against the religious and moral errors of the National Socialists were no longer necessary. For Roman Catholics the voice of the Church was sacred, so that they required no special exhortation to be loyal to the lawfully established government, or to fulfil their civic duties. A joint pastoral letter issued by all German archbishops and bishops [3] emphasised that the new Reich had promised to maintain the charter that granted to the Church the right to life and freedom. Further it expressed in lofty and dignified language the ideas of patriotism, national freedom, and respect for authority.

The Supreme Evangelical Church Council adopted a similar attitude in its Easter message [4] to the congregations of the Old Prussian Church. In this they emphasised not only their willingness to collaborate with the new government but also their trust in its solemn assurance that the Church would still enjoy the freedom necessary for the development of its work and its existence.

Hitler sent von Papen to Rome at Easter, 1933, to open negotiations with the Curia for the Reich Concordat. This was signed on 20th July 1933 in the Vatican City, those particularly concerned in it being, on the one hand, Cardinal Pacelli, now Pope Pius XII., who had previously

[1] See *n.* 2, p. 294.
[2] 28th March 1933.
[3] 3rd June 1933.
[4] April 1933.

been Papal Nuncio in Berlin, and on the other, the German bishops and Monsignor Kaas, the former leader of the Centre Party.

To-day we can safely say that the negotiation and conclusion of the Concordat was intended to lull the Catholic Church into a sense of security. Meanwhile the aim of the Hitler Reich was to capture the territorial Evangelical Churches and so to bring the majority of Church members to heel. By this means the Nazis considered that they would be in a sufficiently strong position to expel the Catholic Church from Germany.

Just as in the political field the Reich had subjugated the member States by the appointment of Reich Commissioners, with the armed strength of the Party behind them, so the German Christians were to make themselves the leaders of the Church authorities by the appointment of ecclesiastical Commissioners. But their first attempt, which had been made in Mecklenburg-Schwerin, was a failure. The Nazi Premier of this territory appointed a Commissioner for the Evangelical territorial Church,[1] of which the Bishop, Dr. Rendtorff, was reputed to favour the new movement in the Church. Members of the Church, however, protested to the Minister of the Interior and to the Government of Mecklenburg so strongly and pertinaciously that the appointment had to be cancelled a few days later.

The leaders of the German Evangelical Churches were shrewd enough to take the initiative in the reform of the Constitution. For this purpose the Church Committee [2] gave extensive powers [1] to Dr. Kapler, (United), its President, Dr. Marahrens (Lutheran), the Bishop of Hanover, and Dr. Hesse (Reformed) the director of the theological college at Elberfeld, who together made up the so-called " Council of Three."

At the same time a desire for concentration also showed itself inside the territorial Churches in preparation for the coming discussions. The Synods of many of the countries besides Hanover elected bishops—thus, Bavaria elected

[1] End of April 1933. [2] See p. 307.

Dr. Meiser, who was also made President of the Directorate that was formed by the union of all the Evangelical-Lutheran territorial Churches of Germany.

Hitler nominated [1] Ludwig Müller,[2] at that time chaplain of a military district of Königsberg, East Prussia, and a member of the Reich administration of the German Christians, as liaison officer between himself and all representatives of the Evangelical Church.

Hossenfelder, leader of the German Christians, handed to the President, Dr. Kapler, a statement of the "principles" of his movement.[3]

Dr. Fezer, professor of theology at Tübingen, joined the movement and did his best, though in vain, to modify its mode of procedure so that it should be more acceptable to the Church.

Müller met the "Council of Three" at Loccum. Together they worked out the foundations of the new Church constitution and published them in the "Loccum Manifesto." [4]

The Council of Three had informed Müller at Loccum that the Church Federation [5] had decided to appoint Fritz von Bodelschwingh, Master of the famous Home for Children and Old People (Bethel, in Westphalia), as Reich Bishop. Müller thereupon requested the Council of Three not to suggest a Reich Bishop until after he had made his report to Hitler on 24th May 1933. To this they agreed, but he abused their courtesy by coming to an arrangement on 23rd May with the German Christians whereby they publicly appointed him their protector and candidate for the Reich Bishopric. This was announced in the Press.

On 24th May the Reich administrators of the German Christians visited Dr. Kapler and informed him that the Reich Bishop must be a member of their movement, must possess Hitler's confidence, and must be able within three or four weeks to show that he was supported by the majority of Church members. Their candidate was Müller.

[1] End of April 1933.
[2] See pp. 325, 327.
[3] See pp. 324–5.
[4] 20th May 1933.
[5] See p. 307.

The Council of Three thereupon announced the election of von Bodelschwingh as Reich Bishop, and, having ascertained that the representatives of all German Evangelical territorial Churches agreed, inducted him to his new office at a ceremonial session.

Hossenfelder warned Kapler against carrying out his intention of organising a demonstration in favour of von Bodelschwingh, the new Reich Bishop, to take place as part of the service on Whitsunday in all the churches. He said that if this were persisted in, "spontaneous" protests might lead to brawling in church.

Even the German Christians [1] could not fail to recognise the sincerity of von Bodelschwingh and his exemplary work for the Home Mission. Nevertheless, in a broadcast speech, Müller opposed his appointment as Reich Bishop. He also expressed, in a letter [2] to the Council of Three, Hitler's extreme regret at the unwelcome developments in the matter of Church reform, and announced Hitler's refusal to receive von Bodelschwingh or the Council of Three. Nor could they at present be received, he said, by President von Hindenburg. No Reich Bishop could be recognised until the office of Reich Bishop had been created by the entry into force of the new Church constitution. The letter closed with the hope that negotiations might be reopened between the Council of Three and him (Müller) with the object of preparing new elections or discovering some other solution.

This "solution" was to be the agreement of the Council of Three to the adoption of Müller as the sole candidate for the Reich Bishopric.

Legally the Evangelical Churches were entitled to settle their own affairs. The Loccum Manifesto laid down the details of the future Church Constitution, which provided for a Reich bishopric. The territorial Churches having given their approval, the election of von Bodelschwingh as

[1] Daum (see *n.* 1, p. 326), *op. cit.* p. 51. Leffler (see *n.* 2, p. 327), *op. cit.* p. 18.

[2] 15th June 1933.

Reich Bishop could be expected with certainty after promulgation of the new Constitution. In the exceptional circumstances the Council of Three, being possessed of plenary powers, could vest in von Bodelschwingh, as Reich Bishop, the necessary powers to carry through the reform of the Church. The government and the German Christians had, after all, not objected to the election of territorial Bishops. Why therefore did they obstruct the promulgation of the new Church Constitution? The reason was simply that they wanted to make of it an instrument for ensuring the power of the German Christians.

That was possible only by intimidation or force. The Council of Three did not allow itself to be intimidated even by Müller's letter. Reich Bishop von Bodelschwingh continued his efforts to carry out the task allotted to him by the Church Federation through the Council of Three.

So the government fell back on force. They could not well put the blame on churchmen for terroristic acts, and they therefore magnified the following harmless incident into a breach of the Evangelical Concordat, though they themselves were intending to violate all their Concordats soon enough and in the most barefaced manner.

Kapler's term of office as President of the Supreme Evangelical Church Council of the Old Prussian Union [1] ended on 30th June 1933. The Church Senate [2] decided, in view of the approaching reform of the Church, to allow his functions to be performed provisionally by a Commissioner, the General Superintendent of the Rhineland, Dr. Stoltenhoff, who, however, should continue to perform his existing ecclesiastical duties.

The post of President of the Supreme Evangelical Church Council had hitherto always been occupied by a lawyer, assisted by one clerical and one lay vice-president and other clerical and lay members. That did not, however, prevent the constitutional authorities from giving the post to a clergyman as their Commissioner.

The Church had omitted to inquire whether the

[1] See p. 312. [2] See p. 315.

government had any objection to Stoltenhoff on political grounds, and Rust, the Prussian Minister of Education, regarded this as a grave breach of the Evangelical Concordat.[1] He telegraphed to the head of the ecclesiastical department of his Ministry, Dr. Trendelenburg, granting him " leave of absence," and put in his place a judge of the district court, Jaeger, head of the Church and State department of the Reich administration of the German Christians. He also appointed Jaeger Commissioner with extraordinary powers over all Prussian territorial Churches " to clear up the existing confusion."

Thereupon von Bodelschwingh placed his resignation as Reich Bishop in the hands of the Church Federation on the grounds that it was impossible to carry out the functions of the office.

The ecclesiastical department of the Prussian Ministry of Education was obviously aware of Stoltenhoff's appointment as Commissioner, but did not, like the Minister himself, exaggerate its significance. As the Government had raised no objection to Stoltenhoff's appointment as General Superintendent, the same might be assumed regarding his interim appointment to the presidency of the Supreme Evangelical Church Council. It is doubtful whether the political proviso of the Concordat was applicable to his case at all. Even if it were, the infringement was not such as to justify the measures taken. This was the view of reputable lawyers, in particular of Dr. Flor,[2] a judge of the Supreme Court of Appeal.

Jaeger prohibited the Prussian territorial Churches and the Church Federation [3] from carrying on mutual business except through himself. He appointed a Berlin lawyer and municipal councillor, Dr. Werner, adviser on ecclesiastical law to the Reich administration of the German Christians, interim President of the Supreme Evangelical Council,[4]

[1] See p. 316.

[2] Opinion " On the Church dispute from the Legal Standpoint " in the journal *Junge Kirche*, 1933, pp. 226 *et seq.*

[3] See p. 307.

[4] See p. 312.

vesting in him at the same time the authority of the Church Senate.[1] And he appointed Hossenfelder, leader of the German Christians, clerical Vice-President of the Council. Hundt, the former Vice-President, and the General Superintendents, Dr. Dibelius (Kurmark), Dr. Karow (Mark of Brandenburg) and Schian (Breslau) were granted "leave of absence."

Jaeger also declared that all the elected representative bodies within the territorial Churches were dissolved, and ordered his Commissioners, one of whom he appointed for each Church province and to whom he had transferred the powers of the committees formed by the representative bodies of the Churches, to reconstitute these bodies forthwith by the appointment of new members. Any clauses of the Church Constitution that might be inconsistent with this he declared invalid.

In ecclesiastical affairs, therefore, Jaeger dealt with the Church [2] in the same way that the Reich dealt with its member countries in political matters.

His Commissioners in the Church provinces were mostly German Christians, such as Dr. Kinder, Commissioner for the Lutheran Church in Schleswig-Holstein.

Among the measures taken by Jaeger was, of course, the suppression of Church newspapers. The leading members of the Evangelical Press Association, Dr. Hinderer and Dr. Liepmann, were granted "leave of absence," and their places taken by German Christians.

Such a storm of indignation arose against Hossenfelder's appointment to the highest ecclesiastical office in the Prussian Churches that Jaeger relieved him of the post of clerical vice-president and instructed him to place himself at Müller's disposal for "proselytising work among the people." At the same time Jaeger transferred to Müller the supreme authority in the Old Prussian Union Church.

Working hand in hand with Jaeger, and having been given full powers by Hitler, Müller assumed control of the

[1] See p. 315.

[2] *Gleichschaltungsgesetz.* See *n.* 1, p. 52.

Church Federation and its Council,[1] his excuse being the "state of emergency" in the Evangelical Churches; and he announced that he was exercising the powers of the Assembly,[1] the Church Committee,[1] and its sub-committees. He withdrew the powers vested by the Church Committee in the Council of Three, on which Dr. Seetzen[1] had meanwhile taken the place of Dr. Kapler. He also granted Dr. Hosemann,[1] director of the Church Federation office, "leave of absence."

The Supreme Evangelical Church Council, having been ejected from office, appealed to the State Court in Leipzig. It refused to be intimidated even by Jaeger's broadcast speeches, in which he described this appeal to the courts as a revolt against the authority of the State, and announced that he would suppress it.

The Old Prussian General Superintendents issued a proclamation to their congregations, in which they alluded to the extreme gravity of the situation, protested against the use of political force in the Church, and insisted that the Gospel of the Reformation must not be tampered with to serve political ends.

The General Superintendent, Dr. Dibelius, pointed out in a letter[2] to Jaeger that he had read in the newspapers that he had been "granted leave." True to the Evangelical principle of obedience to the temporal authorities, so far as such obedience did not violate the conscience, he undertook to deal with none of the administrative affairs of his office until the court had given its verdict upon the legal validity of the order. On the other hand he would continue, he said, to practise the essential function of his office, which was the spiritual direction of his diocese.

> "The functions of bishops and priests," wrote Dibelius, "can only be granted by the Church and withdrawn by the Church, and, even so, they cannot be withdrawn arbitrarily but only for heresy or criminal offences. On this rests the independence and the authority of the spiritual office. I

[1] See p. 307. [2] 27th June 1933.

cannot, therefore, allow myself to be relieved even temporarily of these inherent duties of my office by a Commissioner of the State. They remain my duties before God. I must and shall perform them—above all at this time when true spiritual guidance in the Church is more necessary than ever. And if I am prevented from carrying out the duties of my office, then I will perform them by means of prayer—by praying for the congregations and the clergy of my diocese, for that is the strongest of all forces in the life of a Church. In making this declaration I think not only of what I owe to the Church. I think also of our beloved German people. Nothing is more necessary to our people than to have among them men who know how to live according to the words of Holy Scripture : We must obey God rather than man ! "

Göring not only refused to take action, but strengthened Rust's position by transferring to him all his powers as Prussian Premier, with the object of putting an end without delay to the Church dispute.[1] Rust recklessly attacked the deposed Church leaders at a mass demonstration of German Christians at Potsdam.

The interim President of the Supreme Evangelical Church Council stated in a proclamation [2] to the clergy that the General Superintendents had been relieved also of the spiritual direction of their dioceses. The measures of the State Commissioner were not, in his opinion, " attacks on the Church," which the General Superintendents need oppose. There was no longer any obligation to obey them.

The Free State of Saxony followed the example of Prussia.

The National Socialist Press, led by the *Völkischer Beobachter*, wrote in triumph that the way was now free for the solution of the Church question on German Christian lines.

Had things really reached that point? Was the new Reich to succeed so soon in smashing the Evangelical

[1] 29th June 1933. [2] 30th June 1933.

Churches with political weapons and even in preventing the State Court from giving a verdict?

So far Hitler had prevented the deposed Church leaders from visiting President Hindenburg, but they succeeded at last in getting into touch with him. As Head of the Reich and an Evangelical Christian, he intervened, summoned Hitler for an interview, and followed it with an announcement, published in the Press, that he expected peace to be restored in the Church by immediate negotiations.[1]

Hitler instructed Frick, the Minister of the Interior, who was still in charge of ecclesiastical affairs, to carry out the President's orders. Frick set up a Constituent Committee,[2] consisting of himself, the Council of Three (Seetzen, Mahrahrens and Hesse), whose plenary powers were restored; the Bavarian Bishop Meiser, as representative of the non-Prussian territorial Churches; Professor Fezer of Tübingen University, for the theological faculties; Heckel, Professor of Law at Bonn, as expert on ecclesiastical law; and Müller and Jaeger. In a few days, with the help of the preliminary work [3] done at Loccum, the draft of the new Constitution was completed.[4] It was signed, together with an inaugural decree, by the representatives of the twenty-eight Evangelical territorial Churches.[5] The Reich Government recognised the new conditions thus created by issuing a law concerning the Constitution of the German Evangelical Church,[6] which also appointed 23rd July 1933 for new elections to such ecclesiastical bodies as, under the laws governing the territorial Churches, were elected by the members of the congregations.

Jaeger, the State Commissioner, and his agents were withdrawn.[7] The deposed Church leaders returned to their posts and withdrew their case from the State Court.

Hitler expressed his thanks to Müller and the German

[1] End of June 1933.
[2] 7th July 1933.
[3] See p. 349.
[4] 10th July 1933.
[5] 11th July 1933.
[6] Of 14th July 1933.
[7] Order of Rust, Prussian Minister of Education of 14th July 1933.

Christians, assuring them of his particular confidence, since, as he said,

> "history will one day bear witness that you have desired, furthered and helped to achieve one of the most decisive actions in the religious shaping of the German people's life."

The German Evangelical Church that arose from this new Constitution owed its legal existence to the agreement between the territorial Churches to unite, and to a pact between the State and the Church. It was the legal successor of the Church Federation,[1] but its position is strengthened. The settlement of affairs between State and Church was no longer a matter for the separate territories and their Churches, but for the Reich and the German Evangelical Church. The territorial Churches were now members of the German Evangelical Church, but their independence as regards doctrine and form of worship was guaranteed. In all other matters touching their Constitution the Evangelical Church could lay down guiding lines. Since in the Reformed Churches the Constitution is part of their creed,[2] their independence appeared to be still more strongly fortified.

The German Evangelical Church is not an established State Church. For this reason the aryan paragraph was not included. The fight against "alien" racial influence on the new generation of Church leaders was, however, not thereby given up, although the Constitution does not expressly refer to the subject. The independence of the German Evangelical Church was also manifested by its privilege of regulating its own relations with the State and of cultivating direct connections with German members of the Evangelical Church abroad and with foreign Churches with which it is on friendly terms. The head of the German Evangelical Church was the Lutheran Reich Bishop supported by an "Ecclesiastical Cabinet." The National Synod collaborated in the appointment of the leading officers and in legislation.

[1] See p. 307.

[2] See pp. 310–11.

The Reich Bishop was proposed by the leaders of the territorial Churches and the Ecclesiastical Cabinet, and appointed by the National Synod.

The Ecclesiastical Cabinet was nominated by the Reich Bishop. It consisted of three clerical representatives of the main groups of the Evangelical Church [1] and one lawyer, who must be a qualified judge or a higher administrative official. He occupied the double post of leading legal member of the Supreme Evangelical Church Council of Prussia [2] and chief of the "German Evangelical Church Chancellery"—*i.e.* supreme ecclesiastical administrative authority. He acted for the Reich Bishop in all legal matters. But in questions relating to a creed to which the Reich Bishop did not subscribe, his functions were exercised by the corresponding member of the Ecclesiastical Cabinet.

The Ecclesiastical Cabinet administered the German Evangelical Church under the leadership of the Reich Bishop, and, so far as the collaboration of the National Synod was not required, issued decrees. It must also consult with "advisory chambers," the members of which were appointed by the Reich Bishop.

The National Synod consisted of sixty members, of whom [3] two-thirds were delegated by the territorial Churches and one-third were appointed by the German Evangelical Church. The number of delegates to the National Synod, and for the construction of the Ecclesiastical Cabinet, was fixed by the inaugural decree.

The new legal situation had all the features of the compromise that might have been effected without the interference of Rust, Jaeger and Müller. We are therefore justified in looking at it with some measure of distrust. It strengthened the position of the Reich Bishop to a dangerous degree, though the Führer principle was weakened by the collaboration of the Ecclesiastical Cabinet and the National Synod. In many respects it was still a framework, since more detailed regulations were yet to be laid down by law for all

[1] United, Lutheran and Reformed. [2] See p. 312.
[3] For a period of six years.

executive bodies of the German Evangelical Church. So far the Church leaders regarded Article I. of the new Church Constitution [1] as the strongest bulwark against new attacks. But did this really insure the Church against the risk of Nazi "interpretation"? The answer depended entirely upon the persons elected in the Church elections which were about to take place.

(*b*) *Emergency Union of the Clergy against the Reich Bishop:*

The shortness of the time allowed before the election itself gave the game away; the German Christians were to be helped to an overwhelming victory by every possible means. They had in their hands all the resources of the State and the Party for the "free" expression of opinion such as the radio, the cinema, and the press, which were turned into instruments of enslavement by the coercive and one-sided use made of them. The Old Church leaders had only their pulpits and a limited opportunity for personal and written contact with their supporters. So from the very beginning it was not a fair fight, though in many quarters, in order that the people should not realise this, it was denied that the Party and the German Christians were working together. Such denials were vain, however, since it was obvious that they were co-operating throughout the country. This was therefore described as a series of "spontaneous and voluntary" demonstrations. Secret instructions issued by Hossenfelder for the election campaign showed clearly that the German Christians were preparing the elections in close collaboration with the highest Party authorities and with the help of the State machinery controlled by them.

On the day before the elections [2] Hitler made a speech, which was broadcast from all German stations, to the effect that every "patriot" must vote for the German Christians. Such was the "impartial" attitude of the Reich.

On election day [3] those members of the Evangelical

[1] See *n.* 1, p. 329.

[2] 22nd July 1933.

[3] 23rd July 1933.

Churches who had united, under the motto " For Gospel and Church," against the German Christians were subjected to tremendous pressure. At many of the polling stations their voting cards were seized by Storm Troopers without interference by the State authorities, or even confiscated by the police.

The German Christians obtained a majority almost everywhere, amounting in some places to two-thirds of the votes. In many parishes the voters assented to combined lists. These were agreed between the German Christians and their opponents, and included representatives of the latter as well as the former, so that a contest was avoided. It subsequently appeared that the German Christians had done this with the mental reservation that at the first opportunity they would oust their opponents, who were in a minority, or forcibly incorporate them. Here also, therefore, the political example of the Nazi methods in dealing with their Conservative allies in the Government was followed.

Overestimating their opponents' success, several members of the Supreme Evangelical Church Council of Prussia [1] applied for " grant of leave." The Church Senate [2] elected Müller Bishop of the Old Prussian Union Church.[3]

The Prussian General Synod,[4] composed in accordance with the results of the polls, met in Berlin [5] in order, among other things, to elect their nineteen representatives on the National Synod of the German Evangelical Church. One hundred and fifty-six members of the General Synod are German Christians, and seventy-one are adherents of the " Gospel and Church " group. The German Christians refused to agree that their opponents should be represented in the National Synod in this proportion, claiming that they should have three representatives only. The spokesman of the " Gospel and Church " group pointed out that the

[1] See p. 312.
[2] See p. 315.
[3] On 4th August 1933.
[4] See p. 312.
[5] On 5th September 1933.

methods adopted by the temporal authorities should not be introduced into the Church, since they were inconsistent with the Christian obligation of fraternal co-operation. At this the German Christians created such an uproar that he could not continue his speech, whereupon the whole of the " Gospel and Church " group left the hall as a protest.

The National Synod of the German Evangelical Church held its first session in Luther's town of Wittenberg. It elected Müller Reich Bishop, and appointed Bishop Schöffel (Lutheran, Hamburg), Bishop Hossenfelder (United), and Dr. Weber (Reformed), clerical members of the Ecclesiastical Cabinet. The legal member was Dr. Werner.

The German Christians ruthlessly employed their majority to constitute the Church according to their own ideas and principles. Anything like thorough discussion or debate was forbidden. The Synods of some of the territories issued decrees that were contrary to the doctrine that was specifically protected by the new Church Constitution, as, for instance, the frequent introduction of the aryan paragraph.

Clergymen and Church officials who refused to be intimidated into obeying the dominant group, were punished by prohibition from exercise of their functions, by house-arrest, or by summary dismissal.

As a protest against the dictatorship of the German Christians, the opposition clergy of the United and Lutheran Churches jointly established the Clergy Emergency Union. When the first session of the National Synod was held, the Union, numbering two thousand clergymen, distributed a handbill, which stated that all the pompous ceremonial of the National Synod gave a false impression of a united Church, for it was rent by profound differences, which were only hidden from view by means of coercive measures. The servants of God's Word must never allow themselves to become the slaves of man ! Complete liberty to preach the Gospel, and complete personal liberty for the preachers

themselves, should be restored by unambiguous resolutions of the National Synod.

By the beginning of 1934, membership of the Clergy Emergency Union had grown to more than seven thousand. For this there were four reasons : the leadership of Martin Niemöller, of Dahlem, Berlin ; the attitude of the Reich Bishop ; resentment at the appointment of Hossenfelder to the Ecclesiastical Cabinet in spite of his removal only shortly before from the post of clerical vice-president of the Supreme Evangelical Church Council of Prussia ; and the clear and simple pledge, which every member had to sign :

> 1. I solemnly promise to fulfil my office as a servant of the Word of God, bound only by the Holy Scriptures, and the tenets of the Reformation, which I acknowledge as the true interpretation of Holy Scripture.
>
> 2. I solemnly promise to protest with all my power against all violations of those tenets.
>
> 3. I acknowledge that I share the obligation to assist, to the best of my ability, all who are persecuted for supporting such tenets.
>
> 4. Cognizant of these obligations, I bear witness that the application of the aryan paragraph within the Church of Christ is a violation of these tenets.

The promise of Reich Bishop Müller, which was not carried out, that no one should be prejudiced simply because he was not a German Christian,[1] was followed by a Party decree issued by Hess, the Führer's deputy, that no National Socialist must be prejudiced simply because he does not subscribe to any, or any specific, creed or sectarian tendency.

This Party decree was evidently the incentive for a mass meeting, organised by the " People's Church " Group of the German Christians under Dr. Krause, with the approval of Hossenfelder, in the Berlin Sport Palace.[2] About twenty thousand people were present, including many leaders of the German Christians. Dr. Krause demanded a new,

[1] October 1933.

[2] On 13th November 1933.

powerful, and comprehensive " German People's Church " and concluded his speech with these words :

> " We shall see how closely akin the nordic German spirit is to the heroic spirit of Jesus. It will then be manifest that the completion of the Reformation means the final victory of the nordic spirit over oriental materialism. Heil ! "

The echo of this meeting was a mighty protest against the German Christians, which destroyed their hopes.

The Clergy Emergency Union demanded that the Reich Bishop should surrender his position as " protector " of the German Christians, and that he should remove all ecclesiastical officials who were guiltyof religious intolerance, or were responsible for the demonstration in the Sport Palace. It also demanded the restoration of liberty to preach the Gospel and the removal of those who had not protested against the violation of their faith by that demonstration.

The German Christians met at Weimar and replied that, as National Socialists, they stood by the Party Programme, and as Christians by the *pure* Gospel ; and that, in accordance with the Führer principle, they would obey their Reich Leader, Hossenfelder.

The Lutheran Bishop, Dr. Schöffel (Hamburg), resigned from the Ecclesiastical Cabinet.[1]

Thereupon the leaders of the Lutheran Church, among them the Bishops of Bavaria, Württemberg and Baden, issued an official declaration, demanding that the Reich Bishop should remove Hossenfelder from the Ecclesiastical Cabinet ; that this should be reconstituted ; that the interference of the German Christians in Church Government should be ended once for all ; that Müller should no longer be the protector of that movement ; that force and compulsion should no longer be applied in the government of the Church ; and that the confidence of members of the

[1] See p. 361.

Church should be restored by its re-establishment on the basis of creed and constitution.

The result was the resignation of the whole of the Ecclesiastical Cabinet. Hossenfelder announced that he would not permit the German Christians to take any further part in the Church dispute.

The Reich Bishop allowed it to be thought that he was still willing to listen to the protests of the Church leaders, and used the time thus gained to incorporate, contrary to his own promise, the Evangelical Youth in the Hitler Youth.[1]

By doing so he made himself directly responsible for the conversion of the Church dispute into a struggle for and against him personally.

Müller continued to play his underhand game. Those leaders of the territorial Churches who were not German Christians assembled at Halle for a personal discussion [2] with him, as had been agreed. The Reich Bishop, however, excused himself on the plea of illness, professing his essential unity with them in the faith. Yet his illness did not prevent him from issuing a decree [2] in which, among other things, he announced that officers of the Church who attacked the Church Government were guilty of a breach of their official obligations.

The Clergy Emergency Union instructed its members to read the Reich Bishop's decree from their pulpits and to follow it with a counter-declaration which ended as follows :

> " We must conduct ourselves, even towards the Reich Bishop, in accordance with the saying : ' We must obey God rather than man.' "

(*c*) *Concentration of the Reformed Churches :*

Dr. Barth, Professor of Theology at Bonn, who was by birth a Swiss, took a leading part in the grouping of the Reformed Churches in the conflict, and gave valuable assistance to all Evangelical Churches in approaching the

[1] See p. 336.

[2] On 4th January 1934.

problems still awaiting solution. He tells us that after the outbreak of the Church dispute he tried to continue teaching his theological students as though nothing had happened, just as the chanting of the horary prayers at the neighbouring Benedictine Monastery of Maria-Laach proceeded without interruption.[1] The German Christians are incapable of understanding that everyday matters are of small importance to men whose thoughts are on eternity, and so, on account of this statement, they accuse Barth of lack of "unity with the people."[2] When Barth realised that the German Christians intended to invade even the calm and peace of the theological students' workrooms, he decided to show, clearly and unambiguously, the distinction between them and himself. He pointed out that the object of the German Christians was not a revival of the Reformation, but a "Deformation."[3] "The German" he writes, "cannot place himself as a god beside God, otherwise we should have two idols. It is impossible to arrive at an understanding on a Christian basis with such an erroneous doctrine."

The first Free Reformed Synod, at its session in Barmen,[4] accepted Professor Barth's "declaration concerning the right understanding of the reformational denominations within the German Evangelical Church of to-day," because it bore witness to the truth of Holy Scripture.

The Federation of Reformed Churches accepted the declarations of the Barmen Synod and elected a new *Moderamen*, with Dr. Hesse as president and Professor Barth as a member. The new *Moderamen* protested against the Reich Bishop's decree[5] and, on the grounds that he was trying to limit the Reformed Faith, charged him with a breach of the new Church Constitution.

The Reformed Churches also improved their organisation by exercising a stricter hold over such of their congregations

[1] Introduction to the series *Theologische Existenz heute* (*Theological Existence To-day*).

[2] Daum (see *n.* 1, p. 326), *op. cit.* p. 55. [3] *Op. cit.* No. 2, p. 10 *et seq.*

[4] On 3rd January 1934. [5] See *n.* 2, p. 364.

as were scattered in the districts of other denominations, as for instance those of the Free Huguenot Synod.

At the Convention of Osnabrück, representatives of about 550 Reformed congregations met to support the preachers and presbyters in the struggle for their creed. The Convention exhorted those who had already been dismissed by the new Church Government to be faithful to their oath by continuing to serve their congregations. It elected a committee of seven members to develop the organisation, to formulate the demands of the Reformed Church regarding constitution and freedom, and to communicate them to the Reich Minister of the Interior.

(*d*) *Dissolution of the Prussian Union Church—Birth of the Confessional Church :*

Hitler arranged a reception for the Church leaders,[1] at which every group from the German Christians to that of Martin Niemöller was represented. The former asserted their loyalty to the Gospel, their opponents their loyalty to the New Reich. The object of the reception was achieved, *viz.* to bolster up the position of the Reich Bishop, which was seriously threatened. The opposition agreed to co-operate again with him.

The withdrawal of the German Christians from the Church struggle never actually took place.[2] It is true that their Reich Leader was no longer Hossenfelder, but Dr. Kinder. He spoke at a meeting of the German Christians in the Berlin Sport Palace,[3] at which the Reich Bishop also made a speech announcing that the new Church and the new State were to be brought into such close communion that a Concordat was unnecessary.

Jaeger, the former State Commissioner, was made the legal member of the Ecclesiastical Cabinet, with the title of Legal Administrator of the German Evangelical Church.

Events showed that the Reich Bishop wanted only to exploit the pacification that had now been effected for a surprise attack on his opponents. He tried to strengthen

[1] On 26th January 1934. [2] See p. 364. [3] On 28th February 1934.

his central authority more and more, and to use it to absorb the territorial Churches so that they should be deprived of all independence. By such means he intended to convert the German Evangelical Church into the "German National Church." This was inconsistent with the new Church Constitution.

Müller was also Bishop of the Old Prussian Union Church,[1] and transferred all his powers as such to the Reich Bishop, so that that Church was absorbed in the Reich Church.[2] Under a decree issued to effect their amalgamation, the Prussian provincial Synods were reformed and deprived of their independence.

The Westphalian provincial Synod under their president, Koch, refused at their session in Dortmund [3] to submit to coercion. The Gestapo therefore dissolved the meeting. The members refused to be intimidated, but assembled in another hall, as a Free Confessional Synod, again under the presidency of Koch. The hour had struck for the birth of the "Confessional Church."

The Reich Bishop ordered the dismissal of Koch. This produced overwhelming demonstrations in Dortmund in Koch's favour, and most of the congregations of Westphalia declared their adherence to the Confessional Synod.

The example of Westphalia had an encouraging effect. Everywhere Confessional congregations were formed and united to form Confessional Synods.

To ward off the brewing storm, the Reich Bishop again played an underhand game. He gave an assurance that he would not interfere with the creeds of the Church and that he would have proceedings against the Confessional clergy stopped. But he failed to keep his word. He continued to dismiss Confessional clergymen, and to issue decrees that violated the creed. This did not prevent Confessional clergymen, among them Martin Niemöller, from preaching in their churches. The Gestapo was no longer satisfied with house-arrest but resorted in many cases to imprisonment.

[1] See *n.* 3, p. 360.

[2] March 1934.

[3] On 16th March 1934.

The opposition successfully appealed to the regular courts, which declared that several decrees of the Reich Bishop were illegal and therefore invalid, and gave a verdict [1] in favour of certain clergymen who had been dismissed and who were suing for their salaries. The Supreme Court of Appeal confirmed these verdicts. It is significant of the state of affairs that behind a considerable number of these cases was the former legal member of the Ecclesiastical Cabinet, Dr. Werner,[2] who had a personal quarrel with the Reich Bishop and Jaeger.

The Reich Bishop was not to be discouraged, but continued to work for the incorporation of the territorial Churches. To crown all he decreed that the National Synod of the German Evangelical Church [3] should consist only of men who were "indefatigable on behalf of the National Socialist State." Now he could follow the example of the politicians, and rid himself of unwanted men.

Meanwhile the Confessional Church had not been idle in organising a common means of defence. Representatives of the Confessional congregations and provincial synods met in Barmen for the first Reich session of the German Confessional Synod.[4] For the first time the three denominations [5] were represented jointly at a conference of the opposition. A Council of Brethren (*Bruderrat*) consisting of twelve members was elected from among them, including Koch (President of the Westphalian Synod), Meiser and Wurm (Bishops of Bavaria and Württemberg), Hesse (Director of a theological college), and two clergymen, Jacobi and Niemöller of Berlin. The Council of Brethren was intended primarily as a fighting body.

(*e*) *Schism within the Reformed Churches :*

The National Synod of the German Evangelical Church met in Berlin [6] and passed, among other things, a decree

[1] See pp. 313–14.
[2] See pp. 352. 361, 364.
[3] See pp. 357–9.
[4] On 30th and 31st May 1934.
[5] United, Lutheran and Reformed.
[6] On 9th August 1934.

declaring the juridical and administrative measures of the Reich Bishop to be legally valid. This vindicated his unconstitutional application of the Führer principle, and thus also the incorporation of the territorial Churches. In spite of the resolute attitude of the opposition, whose chief spokesman was Breit, a member of the Lutheran High Consistory, of Munich, nothing could be done against the German Christian majority.

The National Synod further issued a decree for the safeguarding of the Reformed creed, taking account of the fact that in the Reformed Church the Constitution is part of the creed. It laid down that within the area of the largest German Reformed congregation, *i.e.* the province of Hanover, no Reich ecclesiastical decree could be issued without the consent of the territorial Church Assembly. The other Reformed congregations were protected by the regulation that the member of the Ecclesiastical Cabinet representing the Reformed Church could veto a Reich ecclesiastical decree if in his opinion it violated the Reformed creed. In that case the opinion of the Reformed Church advisory Chamber [1] must be obtained, after taking which into consideration the Ecclesiastical Cabinet had to come to a decision regarding the decree.

The issue of this decree was the Reich Bishop's reply to the combination of the three denominations in the Council of Brethren of the Confessional Church, his aim being to win over the Reformed Church from the opposition.

The three Reformed representatives of the National Synod [2] voted in favour of this decree, but against that to legalise the actions of the Reich Bishop.

The Council of Brethren met in Hamburg shortly afterwards and rejected all the Reich ecclesiastical decrees that the National Synod had passed. Even the representatives of the Reformed Church supported this move.[3] They

[1] See p. 358.

[2] Territorial Superintendent Hollweg (Hanover), President Koopmann (Aurich) and Pastor Langewohl (Rheydt).

[3] Especially Dr. Hesse.

refused to accept, at the hands of a Müller or a Jaeger, such dubious confirmation of the rights and liberties of the Reformed Church, and thus to be compelled to desert the common fighting front of the three denominations.

On the other hand the representatives of the Reformed Church on the National Synod declared that the decree that safeguarded the Reformed Church made possible its development on the lines of the Osnabrück Convention and the committee.[1] In their opinion, it also established the equality of the Reformed Church with the Lutheran, and safeguarded it from further attacks on the part of the Reich Bishop and the German Christians.

The schism between these two tendencies was further emphasised by the fact that the Synod of the Hanoverian Reformed territorial Church unanimously approved the attitude of their representatives on the National Synod.

(*f*) *Attempted Dissolution of the Territorial Churches of Bavaria and Württemberg.—The Confessional Church proclaims a State of Emergency :*

Jaeger went to Stuttgart and Munich to prepare [2] for the incorporation of the territorial Churches of Württemberg and Bavaria in the "German National Church." [3] In both countries a storm of indignation broke out among the Evangelical population. The Bishops, Wurm and Meiser, asked for an interview with Hitler, which was refused, whereupon they both issued manifestos to their dioceses, which were read by the clergy from the pulpits and enthusiastically agreed to. The interdict of the Reich Bishop, and action on the part of the Gestapo, were both powerless to prevent this.

Bishop Wurm was deposed,[4] placed under house-arrest, and warned to abstain from performing any of his duties under pain of protective arrest. "Bound by God's word," he refused to obey and was kept under police supervision.

At the headquarters of the Bavarian Church in Munich a

[1] See p. 366.
[2] Autumn of 1934.
[3] See p. 367.
[4] 6th October 1934.

violent scene occurred between Jaeger, who had forced his way in with his assistants, and Breit, a member of the High Consistory, who vigorously protested. The following day Bishop Meiser held a special service in the Church of St. Matthew, Munich.[1] Thousands were turned away, and the crowded congregation was especially moved by the following words of their Bishop :

> " When faith and conscience are at stake, it is a matter of heaven or hell, eternal bliss or eternal damnation. Why did Luther not yield ? Because he knew that God does not love those who yield. Why did our forefathers leave hearth and home for the sake of their faith and go into exile ? Because they knew that God does not love those that yield. . . . Our Evangelical Church would no longer be Evangelical, and would lose the right to call itself Lutheran, if now, in this question of conscience, it yielded to force. . . ."

Among the crowds who cheered the Bishop on his way back from the Church to the Church House were many National Socialists who refused to follow the Reich Bishop in the Church question. Bishop Meiser was also dismissed and placed under strict house-arrest. He was not even allowed to go into the courtyard.

News of the events in the capitals spread from place to place in the two territories. Several congregations of Northern Bavaria declared that they would not deliver grain and provisions for the Winter Help until the Bishop had been set at liberty.

Now the Confessional Church gathered its energies for decisive action. The German Confessional Synod held its second Reich session at Dahlem, Berlin, and proclaimed a state of emergency in the Evangelical Church.[2] The reasons for this step are outlined in the following set of propositions :

> " The Church Government of the Reich has by its doctrines, decrees, and actions, set aside the basic article of the new Church Constitution.[3] The National Church

[1] 12th October 1934. [2] 20th October 1934. [3] See *n.* 1. p. 329.

aimed at by the Reich Bishop with his watchword, 'One State, one People, one Church,' means nothing less than the surrender of the Churches' message to the powers of this world. The absolute power claimed by the Reich Bishop and his legal administrators is a papacy that the Evangelical Church cannot possibly accept. Obedience to Holy Writ and the Creed cannot be an act of insubordination towards the Church Government. The introduction, contrary to the Bible, of the purely secular Führer principle calls for the unconditional and inadmissible obedience of ecclesiastical officers to the Church Government instead of to Christ. The invalidation of synods and congregations is a negation of the doctrine of the priesthood of all believers, established by the Reformation. The violation of the South German Churches has destroyed the last possibility of restoration of order in the Church under former conditions. The Constitution of the German Evangelical Church is shattered. Its lawful bodies no longer exist. The men of the new Government of the Church have by their deeds cut themselves off from the Christian Church."

In the administration of the state of emergency the Confessional Synod set up a Council of Brethren of the German Evangelical Church, and appointed members of it to form a Council of the German Evangelical Church, to govern that Church as a Federation of Churches that profess the true and unadulterated faith. Both bodies consisted of representatives of the three denominations.

All Christian congregations, clergy and elders were called upon not to accept any further instructions from the former Reich Church Government, to abide only by the instructions of the Confessional Synod, and to refrain from further co-operation with those who wished to continue obeying the Church Government of Reich Bishop Müller.

The Council of Brethren of the German Evangelical Church informed the Reich Government of the decisions of the Confessional Synod, and pointed out that the Church was the sole arbiter in matters of doctrine and internal order, but without prejudice to the supervisory right of the State.

The success was complete. The independence of the

territorial Churches of Württemberg, Bavaria, Baden and Westphalia was restored. The deposed bishops were reinstated. Hitler received the South German bishops, Meiser and Wurm, and the Lutheran Bishop of Hanover, Marahrens. Jaeger was forced to resign—but Reich Bishop Müller remained in office.

(*g*) *Final Struggle against the Reich Bishop. The Provisional Church Government :*

Müller's behaviour now alienated even men whom he had appointed leaders of the territorial Churches, and people who had so far supported him. The Churches of Holstein, Thuringia, Brunswick, Silesia and Lippe, and the Lutheran and Reformed Churches of Hanover, broke with him.

The home and foreign missionary societies, and many of the clergy and professors of theology, begged the Reich Bishop to retire for the sake of the Church. Needless to say, he remained in office.

The Churches that had broken with him now established contact with the Council of Brethren of the Confessional Synod,[1] and all except the independent territorial Churches joined the organisation of the Confessional Church. The independent Churches, such as those of Bavaria, Württemberg, Hanover, etc., together with the Council of Brethren of the German Evangelical Church, formed the Provisional Church Government. Its president was Marahrens, Lutheran Bishop of Hanover; his assistants being Koch (United), Breit (Lutheran), and Humburg (Reformed), with Dr. Fiedler (Lutheran) as legal adviser.

The Provisional Church Government issued its first manifesto,[2] in particular confirming the appointment of the executive bodies of the Confessional Church in those areas that were under the government of the German Christians, this latter being incompatible with the Creed and the new Constitution of the Church.[3]

The Reich Government refused to recognise the

[1] See p. 372. [2] On 23rd November 1934. [3] See *n.* 5, p. 356.

Provisional Church Government, which, instead of straightway declaring the Reich Bishop deposed and organising its own administration, lost spirit and began to waver. It entered into negotiations with the Reich Government, which lasted for months and in the end proved fruitless, for Hitler was determined to retain Müller as his Reich Bishop.

In March 1935 the Confessional Synod of the Old Prussian Union Church met at Dahlem, Berlin, and resolved to publish a " Message to the Congregations."

In this they declared that the belief in " Eternal Germany," demanded by the new religion, was a violation of the first commandment, and that the State, " by arrogating to itself the dignity of eternal empire and making itself the final arbiter in all spheres of life," forfeited its authority.

All the clergy of the Old Prussian Confessional Synod were ordered to read this message from the pulpit at the next Sunday service.[1] The Reich Bishop, unable to stop this demonstration, applied to the Gestapo. The Gestapo prohibited the Confessional clergy from reading it, pointing out that, the coming Sunday being also Heroes' Remembrance Day, to do so would be regarded as highly offensive to the Reich Government. In spite of this warning, most of the Confessional clergy read the message, and more than five hundred of them were either imprisoned or, like President Koch, placed under house-arrest.

The public showed their sympathy by demonstrations in favour of the clergy. When my eldest son was about to be confirmed, the Confessional clergyman, who was preparing the class of which he was a member, wished to examine them publicly in church. He was prevented from doing so by being placed under house-arrest. Thereupon, the parents and friends, including my wife and myself, went from the church to his house and heartily cheered him when he appeared at the window. On confirmation day, in spite of the presence in the church of Gestapo men, he

[1] 17th March 1935.

exhorted the young people not to let their patriotism make them forget their religious faith, or to substitute for it faith in race and blood. By this courageous expression of his convictions he gained the affection and admiration of his class, and it may safely be said that the memory of that solemn hour will remain with them all their lives.

The Provisional Church Government attempted to intervene on behalf of the Old Prussian Confessional Synod, pointing out that its message to the congregations was directed not against the State authorities but against neo-paganism. Some sixty-five clergymen were expelled from their homes by the police ; about forty were sent to concentration camps ; and many were required to give a written undertaking not to speak again from their pulpits. Two months or so later, however, those who had been arrested were at least set at liberty.

About this time [1] the third Reich Session of the German Confessional Synod was held in Augsburg. The principal matter under discussion was the relation of the Church to the State authorities, and a manifesto was issued containing, among other things, the following :

> " Obedience to the authorities ceases at the point where it would compel the Christian to sin against God's commandments. . . . Do not allow even oppression or persecution to divert you from rendering due obedience to the temporal authorities. . . . Keep in your hearts the true love of our people ! Honour the gift of God that our people represents. . . . "

Professor Karl Barth [2] took exception to this last sentence and described it, in a letter which he wrote to friends who had attended the Augsburg Synod, as a concession to the German Christians, which had been intentionally omitted from previous announcements and which was not calculated to attract more Churches to join the Confessional Church, as they all desired. In the same letter he stated that the government of the Third Reich was

[1] 4th to 6th June 1935.

[2] See p. 364.

not to be regarded as the " powers that be," in the sense of Chapter XIII. of the Epistle to the Romans, because it was not the government of a State ruled by law.

Barth had evidently expected more positive results from the Reich session of the Confessional Synod. This, he considered, ought to have influenced the Provisional Church Government to do more than merely protest against the incursions of the State into the domain of the Church, which was protected by law. His reference to Chapter XIII. of the Epistle to the Romans was, however, considered unfortunate even by his supporters. First, it was in opposition to the law of the Evangelical Church and to Evangelical doctrine regarding behaviour towards anti-Christian authorities,[1] and second, it provided the opponents of the Confessional Church with a pretext for saying that it was actuated by political motives in its struggle against the totalitarian claims of the Reich.

The outcome was that, though it did not abandon its fight for the Constitution and the Creed, the Reformed Church emphatically dissociated itself from Barth's remarks ; and also, unfortunately, that he lost his professorship.

(*h*) *Professor Barth leaves Germany :*

Barth was dismissed from his post [2] by the professional court as a punishment for failing to give the Hitler salute and for other demonstrations of his refusal to acknowledge the new State—an attitude that was regarded as intolerable. Barth appealed to the Prussian Supreme Administrative Court in Berlin, which reversed this verdict and only inflicted a small fine.[3] Shortly afterwards the State fell back on the regulations for the reconstruction of the professional Civil Service [4] to remove Barth from his post at Bonn University. His letter about the Augsburg Synod was not without its influence on this decision, for its contents had become more widely known to the public. He subsequently returned to Switzerland, his native

[1] See pp. 308 *et seq.*
[2] 20th December 1934.
[3] 21st June 1935.
[4] See p. 183.

country, and his departure was a serious loss to the Confessional Church and the Reformed Churches.

(*i*) "*Intact Territorial Churches*" *and* "*Devastated Church Areas.*" *Administrative Measures of the State :*

The struggle of the Confessional Church and the Provisional Church Government with the Reich Bishop resulted in the so-called "intact territorial Churches" and the "devastated Church areas." A territorial Church (*Landeskirche*) extends over the whole of one of the former individual German States (*e.g.* the Old Prussian Union Church, or the Lutheran Church of Bavaria), or over one of the provinces forming part of such State (provincial Churches). The provincial Churches either belong to a Church that extends over the whole of a former individual State (thus the provincial Church of Westphalia belongs to the Old Prussian Union Church), or are independent members of the German Evangelical Church (*e.g.* the Lutheran and the Reformed Churches of Hanover). The appellation of intact territorial Churches [1] is applied to those Church areas in which the German Christians have not succeeded in seizing permanent possession of the Church government and in introducing their "principles." In the "devastated Church areas" [2] there are two Church governments. There is no clear dividing line between the government of the Council of Brethren of the Confessional Church and that of the German Christians. Some of the congregations have adhered to one, others to the other government; others, again, have remained neutral. The confusion is greater still when there are several clergy

[1] "Intact territorial Churches" are, *e.g.* the Lutheran Churches of Bavaria, Württemberg and Hanover, and the Reformed Churches of Hanover and Lippe.

[2] "Devastated Church areas" are, *e.g.* the Old Prussian Union Church with the exception of the Church province of Westphalia; the Thuringian Evangelical Church; the Lutheran Churches of the free state of Saxony, of the three Hansa towns (Hamburg, Bremen and Lübeck), of Oldenburg, Mecklenburg, Brunswick and Schleswig-Holstein; and the United Provincial Church of Hesse-Nassau.

attached to one parish, who are adherents of different governments.

To end this confusion, for which the Reich Bishop, supported by the Reich Government, was responsible, Prussia, with the approval of the Reich, established financial departments of the Church government to supervise and co-operate in the administration of finances.[1] The heads of these departments, who must act in accordance with the Führer principle, are at the same time State supervisory authorities.[2]

These regulations encroached upon the independent life of the Church, but may, perhaps, be excused on the ground that conditions generally had become impossible. The position was different, however, in the "Board for the Decision of Legal Matters concerning the Evangelical Church," which was established by the Reich in accordance with the second method referred to in the previous chapter.[3] [4] The purpose of this is to quash verdicts of the ordinary courts of which the Reich Government does not approve, concerning measures taken in the Church conflict, with retrospective effect to 1st May 1933. [4] [5] The new board is to give binding decisions in all civil disputes concerning the validity of those measures taken by the German Evangelical Church or the territorial Evangelical Churches. The ordinary courts must stop the cases before them and hand over the documents to the new board, of which Kerrl, a National Socialist, formerly Prussian Minister of Justice, was appointed head. His appointment as both Reich and Prussian Minister for Ecclesiastical Affairs,[4] which had hitherto been administered by Frick, the Reich Minister of the Interior, in the Reich, and by Rust, the

[1] Prussian Law concerning the administration of ecclesiastical property in the territorial Evangelical Churches, of 11th March 1935, with Administrative Decree of 11th April 1935.

[2] Within the meaning of the Prussian Law of 8th April 1924.

[3] See p. 214.

[4] Law of 26th June 1935; Edict of 16th July 1935; and Decrees of 3rd and 27th July 1935.

[5] See pp. 313–14.

Minister of Education, in Prussia, heralded a new offensive by the State.

(*k*) *The Reich takes over the Government of the Church :*

The Reich Bishop, who was still in office, was unable to assert his authority. The Provisional Church Government still refrained from launching a decisive attack on him, for it wished to avoid precipitating a conflict with the Reich Government, which protected Müller and still refused to recognise it.

The new Reich Minister of Ecclesiastical Affairs opened negotiations with the various Church groups. He was " touched by the appreciation shown him on all sides," and gave an assurance that he was seeking " a solution that would result neither in victors nor in vanquished." The solution was neither more nor less than this : he was empowered to issue [1] decrees, with full legal force, for the restoration of order in the German Evangelical Church and the territorial Churches.

So the Reich no longer claimed only the right of State supervision,[2] but also the actual government of the Church.[3] The Reich Government held that its right to intervene in the internal affairs of the Church was derived from Evangelical ecclesiastical law, according to which, in time of emergency, the State is called upon to protect the Church. At the same time it protested that it regarded itself merely as a trustee for the administration of Church affairs until order was restored, when the Church would again be able to manage them itself. To judge by these protestations, the government of the Reich does not intend to establish a State Church.

The government had some semblance of justification for quoting the authority of Luther : his error of judgment was to acquire an undreamt-of significance four centuries

[1] Law for the Security of the German Evangelical Church, 24th September 1935.

[2] *Jura circa sacra*, see *n.* 2, p. 310.

[3] *Jura in sacra*, see *n.* 3, p. 310.

after his death.[1] It cannot, of course, be denied that the government was the only begetter of the "emergency" in the Church, so that it is a little strange that it should derive "rights" therefrom and, among other things, profess to fear that the "freedom of faith and conscience of the individual" might suffer.[2] Many people did not rebel against this new situation in the way that had been expected of them: possibly they did not, for historical and political reasons, fully realise what it meant to the Evangelical Churches to be deprived again of the right of self-government; for this had been granted to them only by the Weimar Republic,[3] and it may be that their experience of autonomous administration was too short to enable them to grasp its full value to the clergy. But the attitude adopted by a number of clergymen was, indeed, partly explained by the fact that the first measures applied by Kerrl under the powers granted to him held out the hope that his peaceable words would be followed by equally peaceable deeds.

(*l*) *The Reich Ecclesiastical Committee takes the place of the Reich Bishop:*

The Reich Minister of Ecclesiastical Affairs started by appointing a Reich Ecclesiastical Committee consisting of churchmen whose duties were honorary.[4] It acted as the leader of, and represented, the German Evangelical Church, whose internal affairs it settled by decree;[5] but it had to obtain the approval of the Reich Minister of Ecclesiastical Affairs to the appointment and dismissal of Church officials.[5] On the example of Prussia,[6] a finance department was attached to the German Evangelical Church Chancellery.

Similarly, a territorial ecclesiastical committee and provincial committees were established for the territory

[1] See p. 309.
[2] Preamble to the Law, see *n.* 1, p. 379.
[3] See p. 313.
[4] 1st Administrative Decree of 3rd October 1935 to the Law, *n.* 1, p. 379.
[5] *Ibid.*
[6] See *n.* 1, p. 378.

of the Old Prussian Union Church.[1] Corresponding arrangements were made for other territorial Churches,[2] which also affected certain "intact territorial Churches," the alleged purpose being the gradual establishment of a uniform administrative scheme for all the territorial Churches.[3]

All these measures were to be in force until 30th September 1937 only, whereby it was intended to emphasise that they were purely temporary. Their aim was the restoration of order. But matters were not made any clearer by the fact that from the very beginning a number of permanent regulations were issued together with these measures, *i.e.* their validity was extended *beyond* 30th September 1937.[4]

In order to allow the Reich Ecclesiastical Committee free scope for their activities, all contrary regulations were repealed for this interim period.[5] This meant that the functions of the Reich Bishop, the Ecclesiastical Cabinet and the National Synod were in abeyance,[6] and were carried out during the interim period by the Reich Ecclesiastical Committee. The Committee were intended to be guided by the Church Constitution in all matters, including the relationship of the Reich Church to the territorial Churches.[7]

The disappearance of Bishop Müller was welcomed on all sides. The Reich Ecclesiastical Committee described him as an insincere man, whose true nature had been shown by his book *Deutsche Gottesworte*.[8] Nevertheless he continued, and continues, to enjoy the favour of Hitler, who, though he did not succeed in maintaining him in office, can recall him as soon as the opportunity arises.

[1] *N.* 4, p. 380.

[2] 2nd to 4th and 6th to 11th Administrative Decrees to the Law, *n.* 1, p. 378.

[3] *E.g.* by the 9th Administrative Decree, for the Evangelical Lutheran Church of Hanover.

[4] *E.g.* concerning the union of the Churches of Hesse-Nassau, Kassel-Waldeck, Hanover-Pyrmont.

[5] See *n.* 4, p. 380.

[6] See pp. 357 *et seq.*

[7] See *n.* 5, pp. 356 and 357.

[8] See *n.* 4, p. 327.

The fact that the president of the Reich Ecclesiastical Committee was not a German Christian, but Dr. Zöllner, who for many years had been General Superintendent of Westphalia, also had a reassuring effect. He succeeded during the following months in obtaining the repeal of various coercive measures of the German Christians. Several decrees of the Reich Ecclesiastical Committee assisted the cause of pacification.[1]

One question that had become acute in a number of congregations, *i.e.* whether the church building was to be at the disposal of the clergy of a church group that was not in a majority, was answered in the affirmative. Every service, however, was to be for the *whole* parish. In case of necessity the clergy of different groups were to perform their office by turns in the same church.

The new decree concerning Church officials has not yet been applied to the clergy. In other respects it was based on the law concerning the Civil Service, but contained neither the aryan paragraph nor the regulation that Church officials must support the National Socialist State.[2] The dependence of the Evangelical Church upon the State was shown by the facts that the Reich Minister of Ecclesiastical Affairs did not confirm the new decree until eight months after it was passed by the Reich Ecclesiastical Committee, and that he provided for increased supervision by the Reich over the finances of the German Evangelical Church.[3] Thus, for instance, the Church could not, without his approval, purchase a piece of land worth more than Mk.5000.

The new disciplinary decree issued by the Reich Ecclesiastical Committee covered both Church officials and the clergy. The lowest court was the disciplinary chamber

[1] They were issued between October 1935 and spring 1936, and dealt *inter alia* with the use of Church premises, the Law concerning Church officials, the formation of advisory chambers of the German Evangelical Church, and disciplinary law and finance.

[2] See p. 184.

[3] 12th Administrative Decree of 14th October 1936 to the Law. *N.* 1, p. 379.

of the German Evangelical Church,[1] unless the disciplinary authorities of the territorial Churches were competent to act. In both cases appeal could be made to the disciplinary court [2] of the German Evangelical Church, which, however, did not decide matters of doctrine, but left them to the territorial Churches. Although the independence of these Churches in matters of ritual and doctrine was thereby emphasised, there was the risk that the clergy who were German Christians and had their parishes in districts that were controlled by them, could preach the new doctrine of blood and race without being proceeded against for heresy.

The Reich Ecclesiastical Committee further decreed that adverse judgments of a disciplinary court, made during the Church conflict,[3] must be reopened on the application of the accused. The Church conflict had often had the appearance of a conflict waged round certain Church officials. This was, as far as possible, to be stopped.

The most difficult task of the Reich Ecclesiastical Committee—and as it proved a vain one—was to abolish the distinction between "intact" and "devastated" Church areas.[4]

The intact territorial Churches worked with the Reich Ecclesiastical Committee, while the Council of Brethren of the German Evangelical Church [5]—also called the Reich Council of Brethren—refused to recognise it as the Government of the Church. The result was that the Provisional Church Government,[6] in the maintenance of which Dr. Zänker, the Silesian Bishop, had been especially active, fell to pieces.

[1] Consisting of five members, of whom the president and one member must be qualified judges or higher administrative officials, and one member must have taken orders. The members are nominated by the Reich Ecclesiastical Committee.

[2] Consisting of seven members, of whom the president and two members must be qualified judges or higher administrative officials, and two members must have taken orders. All members must belong to the denomination of the accused. They are nominated by the Reich Ecclesiastical Committee.

[3] After 1st January 1934.

[4] See *n.* 1, p. 377.

[5] See p. 372.

[6] See p. 373.

For this reason the German Confessional Synod, at their fourth Reich session in Öynhausen,[1] avoided defining their position towards the Ecclesiastical Committees. The representatives of the intact territorial Churches were in favour of collaboration with them, but the Reformed Church representatives of the Councils of Brethren decided at a sectional meeting of the Synod to refuse to recognise them. The United and Lutheran members of the Councils of Brethren who belonged to the radical wing of the Confessional Church, led by Martin Niemöller, did the same. Niemöller accepted the leadership of the Confessional Church in place of Bishop Marahrens and President Koch.

This breach in the Confessional front is the more regrettable because its members are united on fundamental questions of faith and conscience, and because in the dispute concerning the attitude to be adopted towards the Reich Ecclesiastical Committee, the question was mainly one of the tactics to be employed to attain the object desired by all.

The radical adherents of the Confessional Church pointed out that the Reich and other Ecclesiastical Committees were acting under the orders of the State,[2] and that this put an end to Church autonomy. They distrusted the Reich Government, and quoted incidents in the Church conflict in support of their attitude. Even if there were men on the Ecclesiastical Committees who were not German Christians, all were prepared to come to an understanding with them. The Reich made use of this desire for peace to undermine still further the position of the Church. It could at any time dismiss the members of the Reich Ecclesiastical Committee and replace them by persons favourable to itself. The radicals, therefore, considered that the only way to save the Church was to extend still further the state of emergency[3] announced at the

[1] February 1936.

[2] Joint Proclamation of the Reich and of the Ecclesiastical Committees of the Old Prussian Union of 17th October 1935.

[3] See *n.* 2, p. 371.

second Confessional Synod, and refused to agree to tactics that could only lead to fruitless concessions. The Church Constitution [1] had been so tampered with and cut about that it had lost all meaning for them.

The intact territorial Churches, however, clung to the Constitution, pointing out that in the autumn of 1934 the South German Church leaders had successfully used it to prevent the incorporation of their Churches in the Reich Church. In spite of all their discouraging experiences, they and the members of the Confessional front who were not radicals, did not abandon hope of a peaceful understanding with the new Reich.

The radicals replied that in the autumn of 1934, in view of the events of 30th June, the death of Hindenburg, and the Saar plebiscite, the Reich had had an interest in reducing political tension in the country.

It was because of their desire for an understanding that the intact territorial Churches also failed to draw a sufficiently clear line of demarcation between themselves and the German Christians. They tolerated the German Christians so long as they accepted the Creed, and only took action if they proclaimed their new doctrines. The tactics of the German Christians, however, were to express formal acceptance of the Creed, but to interpret it in their own way as occasion arose.

I believe I am right in saying that the only exception was the intact Reformed Church of Hanover, which resolved at a Church assembly [2] to expel any clergyman who belonged to the German Christians.

Unfortunately there is dissension upon theological points in addition to that concerning the tactics to be employed against the common enemy. It is the search for a doctrinal basis that, born of the common struggle for the faith, will permanently unite the three Evangelical denominations, that is the cause of dissensions difficult for the layman to understand.

The Reformed Churches dispute among themselves

[1] See *n.* 5, p. 356. [2] November 1936.

upon questions of doctrine, the parties in this case being the Reformed and the Confessional Reformed congregations.

The adherents of the Reformed and Lutheran Churches hotly argue the significance of the Holy Communion. The Calvinists maintain that the bread and wine can only be symbols of the body and blood of Christ, whereas the Lutherans believe in the actual presence of Christ when the sacrament is administered. Their theological disputes thus call to mind the days of the Reformation.[1]

As a result of the abolition of the Provisional Church Government,[2] the intact Lutheran territorial Churches established the *Lutheran Council*, the intact Reformed territorial Churches established the *Huguenot Synod*, and the Reformed Church Federation established the *Executive Committee of the Reformed Churches of Germany*. Thus the result of the separation of the intact territorial Churches from the Councils of Brethren, which comprised the three Evangelical denominations, was that the Lutheran and the Reformed Churches, so far as they belong to the intact territorial Churches, no longer have a joint organisation in the Church struggle.

Kerrl, the Reich Minister for Ecclesiastical Affairs, did all he could to fortify the new legal position. On his instructions,[3] in certain devastated Church areas,[4] for which Ecclesiastical Committees had been established, Church unions or groups were no longer allowed to exercise the powers of a Church government or of Church authorities.[5]

[1] Dispute in Marburg, 1529, between Luther and Zwingli concerning the Holy Eucharist. [2] See p. 373.

[3] 5th Administrative Decree of 2nd December 1935 to the Law, *n.* 1, p. 379, with proclamation of 20th December 1935.

[4] German Evangelical Church; Old Prussian Union Church except the Rhineland and Westphalia; Evangelical Lutheran Church of Saxony; Evangelical Churches of Hesse-Nassau and Hesse-Waldeck.

[5] Under the 5th Administrative Decree, these include in particular: (1) The appointment of incumbents, (2) The appointment of curates, (3) The examination and ordination of candidates for the Evangelical territorial Churches, (4) Visitations, (5) Instructions for announcements from the pulpits, (6) The levying and administration of Church rates, (7) The ordering of collections, (8) Collections in connection with parochial affairs, (9) The summoning of synods.

They are forbidden in future to assume such powers in the areas of any territorial Churches ; and if they assume or continue to exercise these powers contrary to this prohibition, they render themselves liable to be dissolved.

These regulations, which were *not* restricted to the interim period, are aimed especially at the Councils of Brethren of the Confessional Church, which continue to exist as "religious communities" with full liberty to disseminate their faith, and are liable to dissolution by the State only if they interfere with the Church administration. But where is the borderline ? Does the liberty to disseminate faith end where Church administration begins ? Must the Church Government not pay attention to the will of the congregations ? Is not this merely another case of deliberate misrepresentation ?

The Council of Brethren of the Old Prussian Union Church caused it to be announced from the pulpits [1] that the Councils of Brethren would continue to occupy themselves with Church administration. A few weeks later the leaders of the Confessional Church sent an address to Hitler in which they assured him of their loyalty, promised him help in his crusade against the Bolsheviks, complained of the oppression to which the Church was subjected, and demanded that its independence should be restored. They asked him whether the alienation of the German people and German youth from Christ was being carried on with his approval, and expressed their disagreement with anti-Semitism on the grounds of the commandment to love one's neighbour.

Hitler vouchsafed no answer. Thereupon most of the clergy of the Confessional Church read the address from their pulpits. Once again the State refrained from making arrests, evidently because of the approaching Olympic games [2] in Germany.

After these were over the Nazis reopened the offensive against the Church, adopting the most violent methods.

Dr. Zöllner, president of the Reich Ecclesiastical

[1] January 1936. [2] 1936.

Committee, in his efforts to secure unity, had even made contact [1] with a group that Rehm, a schoolmaster, had formed within the ranks of the German Christians, which acknowledged the Old Testament and rejected the application of the purely secular Führer principle to the Church. When Zöllner's action became known, however, the majority of Rehm's supporters left him and joined the Thuringian branch [2] of the German Christians.

After the 1936 Olympic Games the position of the Churches grew more and more intolerable, and Zöllner called a meeting of the territorial bishops and the Church leaders of the three denominations.[3] Representatives of the Confessional Church, with the exception of the Niemöller group, were also present. The meeting sent a letter to Hitler, opening with an assurance of their loyalty to him and a promise to support him in his campaign against the godless Bolsheviks. It proceeded to demand the cessation of anti-Christian propaganda, which had become intolerable, and to warn him against training the youth of Germany in hostility to the faith and the Church.

Neither Hitler nor Kerrl considered that this letter called for a reply. Conditions grew steadily worse with the march of events.

The theological training college at Elberfeld was closed, so that the Reformed Churches were robbed of the last theological school of their denomination. The Reich Ecclesiastical Committee were powerless to oppose this breach of the Evangelical Concordat.

Kerrl prohibited the holding of the "Evangelical Weeks" which had been prepared [4] in various cities of the Reich. These are gatherings at which sermons are preached and laymen and clergy can meet for discussion. The Reich Ecclesiastical Committee tried to have this veto raised; but, by the irony of fate, the only place for which this was granted was Nuremberg, the "capital of the Party Rally," and that only at the instigation of the local chief of police—

[1] Summer 1936.
[2] See p. 325.
[3] November 1936.
[4] For the beginning of 1937.

though he had resigned from the Church—who notified Kerrl of the great excitement among the Evangelical population of the city.

The Council of Brethren of the Old Prussian Union Church instructed the Confessional clergy to read from their pulpits a declaration that they were not prepared to accept the illegal interference of the State in the training of candidates for orders.

Martin Niemöller read [1] to his congregation, among whom were a number of army officers and high civil servants, the names of the clergy who had been in prison or in concentration camps during the past year.

At the same time Balzer, territorial Bishop of Lübeck, a German Christian, dismissed without notice or pension eight clergymen who had joined the Confessional Church. The Reich Ecclesiastical Committee tried in vain to secure the withdrawal of this entirely illegal measure. The lower court at Lübeck, at the suit of the eight clergymen, issued an interim injunction ordering that their salaries should continue to be paid. The Gestapo thereupon expelled one of them from the territory of Lübeck and placed the other seven under house-arrest, at the same time prohibiting them from speaking in public.

This method of threatening the clergy of the Confessional front with imprisonment and dismissal with loss of salary unless they yielded, increased, especially in Mecklenburg and Thuringia, where the German Christians administered Church affairs with the utmost intolerance.

Members of the territorial Ecclesiastical Committees and finance departments, who attempted to have unjustifiable measures set aside, were intimidated by the threat that persistence would result in withdrawal by the State authorities of confidence and support.

In such circumstances it is hardly surprising that the Reich Ecclesiastical Committee resigned [2]; as they informed the congregations it was quite impossible for them to continue their work for the pacification of the German

[1] On New Year's Day 1937.

[2] On 12th February 1937.

Evangelical Church, this being in a state of disintegration in which law and justice counted for nothing. They explained what it was now necessary to do, and reaffirmed their loyalty to the people and the Führer.

For more than sixteen months the Reich Ecclesiastical Committee, in an endeavour to save the Church, had co-operated with Kerrl, who pretended to be pursuing the same object. On the day after the Committee's resignation, when speaking to some of its former members, he dropped the mask, probably out of anger at their resignation, and allowed it to be clearly seen that he was the Minister not "for," but "against," Ecclesiastical Affairs. He informed them that race, blood and the soil must to-day have the same inviolable significance for the Church as for the National Socialist State. The Party, he said, professed a positive Christianity. Research into the divinity of Christ was ridiculous, for this was a side-issue. A new prophet—Adolf Hitler—had arisen to reveal what Christ and Christianity really meant.

These words caused a wave of profound disgust to spread through the whole of German Christianity except the German Christians. But could anything else be expected from one who had chosen as his chief assistant such a man as Herr Muhs, who, shortly before his appointment as State Secretary in the Reich Ministry of Ecclesiastical Affairs, had left the Church and rejoined it within a single week?

The Catholic Bishops also strongly criticised Kerrl's attitude. In a pastoral letter, Count von Galen, Archbishop of Münster, expressed loyal comradeship with his Evangelical brothers, among whom were men like Zöllner and Dibelius, in their struggle against the enemies of Christianity.

(*m*) *New Elections for a General Synod are announced:*

After the resignation of the Reich Ecclesiastical Committee, the Churches feared that the Reich would again openly attack them, and they were prepared for the reappearance of Müller, Jaeger and other German

Christians, who probably hoped to attain their ends by co-operation with Kerrl.

To everyone's surprise, however, Hitler did not adopt Kerrl's suggestions, but instructed him to prepare for the election of a General Synod, in order that the Church might, " in complete freedom, and in accordance with the decision of members of the Church," provide itself with a new constitution.[1]

So the Church Constitution of 1933 [2] was to disappear, although up to the last it had been regarded as in force. This had also been the ostensible attitude of the Reich Government. The foundations of the German Evangelical Church had hitherto been the territorial Churches. The individual member of a congregation did not belong to the German Evangelical Church directly, but only through his own territorial Church, which itself was a member of it. This conception of a parent-Church with affiliated Churches in the different territories was to be abolished ; that is to say, the territorial Churches were no longer to send their representatives to the General Synod, but the latter would be formed by direct election of representatives by the members of the Churches.

Hitler and Kerrl had the same end in view. The difference between them was merely one of method. Hitler had such complete faith in his system of mass propaganda that he wished to apply it to the Church, and to get what he wanted through the central Church parliament that would thus come into being.

The onlooker might be under the impression that Hitler's decree was a favourable sign. What more, indeed, can the Church want than democratic elections ? The answer is " a free vote " and " equality for all groups participating in the electoral campaign." But such things are unknown in the Third Reich. Moreover, the parliamentary system can only be applied to the Church with important

[1] Hitler's edict summoning a constituent General Synod of the German Evangelical Church of 15th February 1937.

[2] See *n.* 5, p. 356.

modifications. Are we to vote for or against the divinity of Christ or the doctrine of blood and race on political lines, and canvass for votes by political methods?

The very possibility of such questions reveals the state of confusion into which the Churches had been brought by the Reich. Was confusion so confounded that the government could carry through the elections as it wished? Under what regulations were they to be held? It was hard even to decide who was entitled to vote. Surely in the Church only those should have votes who feel themselves inwardly at one with it, or at least belong to it and desire its preservation! A man who leaves it and rejoins it merely for tactical reasons—to provide one more vote for the National Socialists—clearly desires its destruction.

For these reasons the opposition groups demanded a share in the drafting of the regulations governing the election, and protested against the State, with all its political machinery, conducting it as "Trustee for the Church."

The leaders of the territorial Churches set up a board of four members to perform for the time being the functions of the Reich Ecclesiastical Committee. Kerrl, however, refused to negotiate with it.

Under the threat of new dangers, Dr. Zöllner, the former president of the Reich Ecclesiastical Committee, issued a proclamation [1] containing the warning: ". . . This is the decisive hour. . . . Combine!"

His warning did not go unheard. The Reich Council of Brethren [2] and the Lutheran Council [3] recognised each other's authority as Church Governments and resolved to act jointly in dealing with the Reich in connection with the drafting of regulations for the election and other matters. For this purpose they formed an Electoral Committee of six members, which refused to negotiate with Kerrl but also failed to reach any results in negotiation with other authorities of the Reich.

Meanwhile the opposition groups continued their efforts to unite. Representatives of the three denominations

[1] April 1937. [2] See p. 372. [3] See p. 386.

on the Councils of Brethren met at Halle to settle theological differences. They succeeded in defining formulas for the Ordination Vow and the celebration of Holy Communion. As, however, theologians outside the Councils of Brethren objected to the Halle agreement, the movement towards unity did not make the desired progress.

The dispute concerning the drafting of the regulations for the election, in which the allied opposition groups were at once involved, caused the postponement of the election. The date has not even yet been fixed.

Kerrl prohibited, under threat of fines or imprisonment,[1] the use of churches for electoral purposes and preparations for the election by means of public meetings or handbills.[1] As a result the opposition groups could only conduct their campaign by private meetings organised by Church members' Societies, which could only be attended by the members of the Society that issued the invitation. Guests could only be admitted in limited numbers, if at all.

(*n*) *Red Tape round the Church :*

The Reich Government refused to resign its trusteeship of the German Evangelical Church, and the interim period, which was intended to terminate on 30th September 1937, had been deprived of all practical significance by the disappearance of the Reich Ecclesiastical Committee. Kerrl, therefore, resorted to a new and partly bureaucratic settlement without a time-limit.

He transferred the direction of the German Evangelical Church to the leader of the German Evangelical Church Chancellery,[2] so far as it was outside the jurisdiction of the finance department,[3] and the direction of the territorial Churches to the Church Governments that were in office on 15th February 1937.[4] The conditions that in fact existed on that date were thus legalised. But the exercise of Church government in the German Evangelical Church

[1] 16th Administrative Decree of 25th June 1937 to the Law, *n.* 1, p. 379.
[2] See pp. 358, 378. [3] See *n.* 1, p. 378.
[4] 13th Administrative Decree of 20th March 1937 to the Law, *n.* 1, p. 379.

and the territorial Churches was confined to the administration of current business. No one might be appointed or dismissed, and changes connected with Church politics were not permitted.[1]

These limitations were later dropped.[2] The bureaucratic government introduced into the German Evangelical Church was extended to four territorial Churches,[3] the leader of the supreme ecclesiastical administrative authority of each territory being entrusted at the same time with the direction of the respective Church.[2]

But even in those territorial Churches whose governments derive their authority from the Church Constitutions or have reformed themselves with or without Kerrl's assistance, autonomy is considerably restricted by the increased employment of bureaucratic methods in the finance departments. That is, the administrative authorities of all the territorial Churches now have finance departments, with a centralised organisation administered by the finance department of the German Evangelical Church.[4] It is in their power to influence the conduct of the whole Church administration by cutting off supplies on account of alleged violation of State or Church regulations, and appointing a financial agent.[4] If a Church administrative authority refuses to obey an order of the finance department—if, for instance, it will not give up the Church seal or some document—the finance department does not require to apply to the courts ; the State simply declares the department's orders enforceable.[5]

The Reich is not restricted[4] in the choice of the presidents and members of the finance departments,

[1] 13th Administrative Decree of 20th March 1937 to the Law, *n.* 1, p. 379.

[2] 17th Administrative Decree of 10th December 1937 to the Law, *n.* 1, p. 379.

[3] Old Prussian Union Church, Evangelical-Lutheran territorial Churches of Saxony and Schleswig-Holstein, Evangelical territorial Church of Hesse-Nassau.

[4] 15th Administrative Decree of 25th June 1937 to the Law, *n.* 1, p. 379.

[5] 14th Administrative Decree of 10th June 1937 to the Law, *n.* 1, p. 379.

which are conducted on the Führer principle. A number of German Christians have succeeded in obtaining some of these posts.[1]

Dr. Werner,[2] a German Christian, is the leader of the German Evangelical Church.[3] His position became still more powerful when the Reich Minister of Ecclesiastical Affairs gave him authority in the four territorial Churches that are bureaucratically governed, to appoint substitutes for the leaders of those Churches if they were prevented for any reason, legal or other, from carrying out their duties.[4] It was precisely the four most devastated Church areas,[5] therefore, that were affected ; and in these the bureaucratic leader of the Reich Church was given the " right " for the first time to interfere officially, in his capacity as such, in the affairs of a territorial Church.

These developments clearly show the lines along which the Reich Government, so long as it is of opinion that the time has not yet come for the new elections to the General Synod that were announced by Hitler, is waging war on the Evangelical Churches. By extending the Führer principle, it aims at stifling the Churches with red tape, so that the existing Church organisation shall die of atrophy.[6] The leadership of the Churches is to be linked up to a greater and greater extent with the central ecclesiastical administration, which acts upon National Socialist principles ; and so the individual life of the various congregations will come to an end.

The conflict with the Confessional clergy was withdrawn from the spiritual plane and transferred to the domain of the police and the Criminal Code. The " pulpit paragraph " [7] provides the primary basis for this, for it renders the clergy liable to imprisonment or confinement in a fortress for a maximum of two years, for discussing State affairs in their churches in a manner that endangers public

[1] *E.g.* the Reich Leader, Dr. Kinder in Schleswig-Holstein.
[2] See pp. 352, 361, 368. [3] See pp. 358, 378.
[4] 18th Administrative Decree of 3rd June 1938 to the Law, see *n.* 1, p. 379.
[5] See *n.* 3, p. 394. [6] See p. 319.
[7] Paragraph 130A of the Reich Criminal Code.

order. The same applies to the distribution of written matter. Further there is the law concerning malicious attitude, etc.,[1] and the infringement of the regulations issued by Kerrl in connection with the election campaign.[2] In considering whether the actions of certain Confessional clergymen are criminal or not, we must bear in mind not only the oath of allegiance,[3] but also the functions that Kerrl deprived them of because, in his opinion, they belonged to the Church government.[4] Nazi lawyers now maintain that in certain circumstances the mere act of reading from the pulpit the names of persons under protective arrest may constitute a punishable offence.

(*o*) *The Niemöller Case :*

The radical leader of the Confessional Church, Martin Niemöller, has suffered a particularly tragic fate. In June 1937 he was arrested, together with over sixty clergymen, because they had announced from their pulpits the names of people who had left the Church, and had instituted collections in the Church.

These facts, and the opinions he had uttered from the pulpit or at meetings of the executive bodies of the Confessional Church, all of which the Gestapo had carefully recorded, were used as grounds of action against him, the main legal basis of which was the " pulpit paragraph." [5] He was kept in custody until his actual trial took place, in February 1938, before the Special Court in Berlin. It was held *in camera*. There was a dramatic interruption when counsel for the defence retired from the case in protest against unjustified accusations against the defendant by the Public Prosecutor, and only resumed, at the request of the court, after these had been withdrawn. The sentence [6] was seven months' confinement in a fortress and two fines of 500 Reichmarks and 150 Reichmarks.

Since the penalties provided for offences under the

[1] See *n.* 1, p. 263. [2] See *n.* 1, p. 393. [3] See p. 332.
[4] See pp. 386–7. [5] See *n.* 7, p. 395. [6] 2nd March 1938.

" pulpit paragraph " do not include fines, those imposed in addition to the sentence of confinement indicate that Niemöller was found guilty of other punishable offences, possibly an infringement of the regulations for the election campaign, or violation, by gross negligence, of the law concerning malicious attitude, etc.[1]

The court showed that it was convinced of Niemöller's personal integrity by sentencing him to confinement in a fortress instead of ordinary imprisonment. He was regarded as having already served his sentence by his custody before the trial. The Reich Government evidently did not agree, for the Gestapo placed him in a concentration camp. All attempts to secure his release have failed. It is said that, as a condition of his release, he must give a written undertaking never again to speak from the pulpit. This he has firmly refused to give.

The refusal accords with his known character. He was originally a naval officer, and during the War he served in submarines. After it was over, he found it impossible to remain in the service of the Weimar Republic. In his book [2] he tell us that it was as a result of listening to Christ's message, and believing in that message, and not of any actual interest in theology, that he determined to take holy orders. He interrupted his theological studies to fight as battalion commander of a Free Corps [3] against revolutionary workers. After his return home he began to doubt whether the patriotism of the old front-line soldiers and the youth of the country was strong and pure enough to build a new future.[2] He missed the powerful bond of union, the ultimate standard, with all its obligations ; and he feared that those who no longer felt civil war as contrary to nature were becoming mere mercenaries.[2]

Niemöller's fate is a grave warning. The followers of Rosenberg and the German Christians compete with the former Reich Bishop Müller to destroy men like him.

[1] See *n.* 1, p. 263 ; *n.* 1, p. 393.
[2] *Vom U-Boot zur Kanzel* (*From the Submarine to the Pulpit*), pp. 163 and 179.
[3] 1920.

Rosenberg considers [1] that the Party is too much burdened by the German Christians and would like to "liquidate" them also. Müller has recently been attempting to avoid that fate by creating a demand for a single German religion, to be established by plebiscite. And a man of his kidney can still hold clerical office in Germany, while a Niemöller languishes in a concentration camp !

(*p*) *Attempts to destroy the Bonds connecting the Masses with the Roman Catholic Church :*

In the struggle between the Reich and the Roman Catholic Church, which from the legal aspect is a quarrel over the interpretation of the Catholic Concordat, [2] the Nazis have made several attempts to destroy the bonds connecting the Catholic masses with their Church.

At first a number of cases relating to foreign exchange were exaggerated beyond all reason,[3] for the purpose of showing up the German Catholic Church as an organisation "hostile to the Fatherland" because it smuggled German currency abroad. It is true that some monks and nuns, acting on behalf of their Orders, smuggled capital across the western frontier. In this connection there seems to have been some fear that the Reich was proposing, without lawful grounds, to confiscate Catholic Church property. But to argue from the particular, regrettable as the cases in question may be, to the general—the Catholic Church as a whole—is wrong. Why have not the Nazis similarly investigated the truth of the rumours, which for years have been widely circulated, that certain government and Party organisations, without regard to the protests of the competent financial authorities, send large sums in German Reichsmarks across the frontiers for purposes of propaganda ?

The Nazis adopted the same tactics in the prosecution [3] of clergy and lay brothers for homosexual offences. The

[1] Secret circular letter of Rosenberg, 10th December 1937.
[2] See pp. 329, 347.
[3] Particularly in 1936 and 1937.

Bishops of Meissen and Trier, Peter Legge and Dr. Bornwasser, were called as witnesses, but treated as if they were in the dock because, as high Church dignitaries, they had shown too great clemency towards such persons after hearing of their offences. But it is not for the Nazi movement to throw stones in this unsavoury affair, for in it, the common experience is confirmed that, in mass organisations from which women are excluded or in which they have an inferior status, sexual associations are formed even between men in whom there is no congenital tendency that way.

Further the Catholic clergy were charged with secret dealings with Communism.[1] The occasion for this was the trial of Rossaint, a Roman Catholic chaplain, and his companions before the People's Court, in which, among other people, three Catholic priests were involved. One chaplain was acquitted, the second sentenced to eleven years' penal servitude, the third to eighteen months' imprisonment. The reason for their association with the Communists was their desire to settle the unemployment problem and to bring about universal peace.

Finally the Nazis exploited their own special quarrels with the clergy in Austria for the purpose of casting doubt on the patriotism of the whole German clergy.[2] The Austrian Catholic clergy proved more amenable than that of the Reich, from which its organisation is still separate, while the Evangelical Churches of Austria have joined the German Evangelical Church. The Austrian Bishops stood solidly behind Schuschnigg, but after the annexation they placed themselves, "from innermost conviction and with free will," on the side of Hitler.[3] Cardinal Innitzer, Archbishop of Vienna, even gave the Hitler salute. This friendly reception, which the Nazis themselves had hardly expected, is exploited by them to the utmost, with the object of moulding the Austrian Catholic Church to their own pattern. After the Fulda Conference of the North German

[1] Particularly in 1937. [2] 1938.
[3] Solemn declaration of the Austrian Episcopacy, 18th March 1938.

Bishops,[1] whose pastoral letter was read with special solemnity at High Mass in the Church of St. Hedwig by Count Preysing, Bishop of Berlin, the Austrian Bishops also met and issued a pastoral letter, in which they opposed in detail the measures the Reich had taken to oppress the Church.[2] The result was that Monsignor Kravanik was flung out of the window in the Archbishop's palace in Vienna [3]—a graver sequel to the expulsion of the Bishop of Rottenburg.[4]

This anti-clerical propaganda, which has now gone on for years and which consists in charging the clergy with punishable or dishonourable actions, brings the time nearer when, to maintain discipline, the Party will require all its members without exception to leave the Church. Believers will then have a bitter trial to undergo.

Pius XII., the new Pope, is familiar with conditions in Germany, for he was for some years a Papal Nuncio in Berlin, and later Secretary of State to the Vatican. Nor is he unaware that the Third Reich aims at weakening the Roman Catholic Church, particularly in Austria, by confiscation of its property. In addition, Cardinal Faulhaber had brought to the Conclave the information that immediately before his departure from Munich, Rust, the Reich Minister for Education, had closed the Faculty of Catholic Theology at the University of Munich. This he had done after consulting Kerrl, the Reich Minister of Ecclesiastical Affairs. As a reason for this new breach of the Concordat, the *Schwarze Korps* [5] stated that the reduction in the numbers of the coming generation of university students in Germany had to be stopped. The State would, for instance, suffer a shortage of 17,000 engineers if the youth of Germany would not study for those very professions in which they can contribute to the interests of State and People. According to the *Schwarze Korps* article, the priesthood is a profession of which the

[1] August 1938.
[2] September 1938.
[3] October 1938 ; see pp. 290–91.
[4] See pp. 171, 305.
[5] Official periodical of the Black Guards ; number dated 2nd March 1939.

members are guaranteed a safe existence without risk throughout their lives. The theological faculties are the only ones in which the number of students has not decreased. These conditions might result in a danger that the State could not, in the interests of the people, afford to incur.

(*q*) *Latest Developments in the Evangelical Churches :*

The Munich Pact of September 1938, so far from bringing the hoped-for peace to mankind, proved but the beginning of renewed severe attacks by the State upon the Evangelical Churches.

After the fall of the Provisional Church Government, the Reich Council of Brethren had formed a new Provisional Administration of the German Evangelical Church, consisting in the autumn of 1938 of the following clergymen : Albertz, Bohn, Forck and Fritz Müller of Dahlem (locum tenens for Martin Niemöller, who was, and still is, in a concentration camp). On 27th September they issued a written order to all the parishes to hold on 30th September a service of intercession for peace. The sudden conclusion of the Munich Agreement put a stop to the plan, but the order was regarded by the State as high treason, of all things ; and a secret criminal action was brought against the four clergymen who signed it. Reich Minister Kerrl strengthened his hand by referring to the draft of the order for the peace service that the Provisional Administration of the German Evangelical Church had issued. The service included a confession of the sinfulness of Churches People and State, and described war as a punishment sent by God. These two things, and the following prayer, which was to follow a two-minutes' silence, were regarded as the gravest of crimes :

> " . . . We remember before God the young people and the old who will be torn out of ordered life. . . . We remember all who are exposed to the temptation to exercise cruel revenge and to be overcome by hate. We remember all those whose lands are threatened by war, and lift up our hearts in prayer to God for them all."

In reply to the attacks of the Press under the leadership of the *Schwarze Korps*,[1] the organ of the Black Guards, the Administration of the Confessional Church declared that any clergyman who in those critical days had not called his congregation to the peace service had neglected his duty.

Kerrl seized the opportunity to deepen the opposition between the Confessional Church and the territorial Churches of Bavaria, Württemberg, Baden and Hanover. Though there no longer existed a common fighting organisation between the "intact" territorial Churches and the Confessional Church, efforts to resuscitate it had never ceased. In the previous year the *Gremium* in Cassel, a town in the west central part of Germany, had especially worked for this end. The Confessional Church in the "devastated Church areas," and the "intact" territorial Churches, were the two obstructions that had prevented the transformation of the German Evangelical Church into the "German National Church."

On 29th October 1938 Kerrl summoned the territorial Bishops, Marahrens (Hanover), Meiser (Bavaria), Wurm (Württemberg), and Kühlewein (Baden), and made known to them that he had taken disciplinary measures against the four leading clergy of the Confessional Church, at the same time stopping payment of their stipends. He planned the same measures against the members of the Councils of Brethren of the various territorial Churches who had upheld the Administration of the Confessional Church. Kerrl demanded forthwith from the bishops a written declaration in which they were to describe the four clergymen as traitors; otherwise he would be forced to regard them as their supporters. The bishops asked for an opportunity to interview the accused clergymen of the Confessional Church. Kerrl curtly refused, remarking that he intended to ask the Führer for permission to confine them in a concentration camp. Finally the bishops again signed a declaration similar to that already used by the

[1] 27th October 1938.

Nazi Press as the alleged proof of the united stand of all Church groups against the Confessional Church. In these declarations the bishops condemned the order for the peace service on religious and patriotic grounds, and stated that they dissociated themselves from the clergy in question. Nevertheless the bishops met them in Cassel shortly after the first declaration. It is doubtful whether they will be able to meet again, since this might lead to further pressure from Kerrl.

Kerrl further demanded that the bishops should surrender the independence of their Churches, that they should agree to the exclusive direction of all the Churches by the State from Berlin, and that the spiritual leadership should be transferred to a Synod of laymen under Dr. Werner as chairman. This demand the bishops refused.

Now the State began its attack according to plan. There was no more talk about the former assurances that no State Church was planned and that the State only considered itself the trustee for the Church. On the contrary, the State emphasised that in the finance departments the State's authority must be unconditionally recognised in the interests of the people and the State, in view of which conscientious and religious scruples could not be taken into consideration.

This action of the State was facilitated by the decision [1] of the Supreme Court of Appeal in Leipzig (*Reichsgericht*) that Kerrl's order was legal, which deprived the Confessional Church of power to exercise the functions of the Provisional Church Government.[2] The Supreme Court of Appeal justified its interpretation by stating that, notwithstanding religious tolerance, even the rights of the Church are invalid if they conflict with the fundamental legal principles of the State.

The Confessional Synod of the Old Prussian Union Church, at their sessions of January and February 1939, pointed out the necessity for every Church government

[1] 22nd September 1938.

[2] 5th Administrative Decree of 2nd December 1935. See *n.* 5, p. 386.

to pay special attention to the Creed. When the Church Government exercised its power to replace clergy of the Confessional Church with German Christians, it thereby violated the divine law of the Protestant Church, which commands the true preaching of the Gospel. Even the Confessional Church cannot carry out this divine command if it is prevented by Kerrl's order, sanctioned by the Supreme Court, from educating young men for the Church.

In February 1939 the territories of Thuringia and Saxony, which are in the hands of the German Christians, issued a new Church Constitution, which excluded non-aryans from the community of the Church even if they had belonged to it up to that time.

In April 1939 Dr. Werner, the bureaucratic leader of the German Evangelical Church, gave orders for the amendment of the disciplinary law decreed by the Reich Ecclesiastical Committee depriving of his post every clergyman who violates his obligation to Führer, People or Reich. The leader of the German Evangelical Church also gave orders that the Civil Service Law was to be applied where appropriate, which meant the application of the aryan paragraph to clergy and Church officials.

In the same month, as President of the Evangelical Supreme Church Council of the Old Prussian Union Church, he issued a number of new orders. Henceforth any clergyman of this Church can, even against his will, be transferred or dismissed for unspecified official reasons by a simple order of the authorities—either the Consistory or the Supreme Church Council—against which there is no appeal.

So far as the authority of the Presidents of the Consistories does not conflict with the dictatorial powers of the leaders of the finance departments, that authority is absolute. The office of General Superintendent no longer exists.

On the motion of a minority of a Church congregation whose religious views differ from those of the majority, the Consistory or the Supreme Church Council may appoint

an incumbent at the expense of the congregation. This means that it is now possible for the German Christians to gain a firm footing in all the parishes of the Old Prussian Union Church, which they have hitherto been unable to do.

Dr. Werner, again in his capacity as President of the Evangelical Supreme Church Council, issued jointly with ten leaders of the German Christians, who had seized the government of the Churches in their devastated Church areas, a proclamation [1] declaring that the German Christian principles of "positive Christianity" were authoritative for their Churches. Thus, every Church, whether Roman Catholic or Protestant, that has international connections, assumes a political character, and consequently exercises a debasing influence on Christianity. The German Christians welcomed Dr. Werner's orders as an important step towards their desired goal. This they are trying to attain by means of the following measures :

1. The foundation of an institute for research into Jewish influence and its removal from the life of the German people.

2. The establishment of a Church centre to combat the abuse of religion for political purposes.

3. The establishment of a religious and political seminary for the investigation of the connection between politics, ideology and religion.

4. The publication of monthly news for the clergy and elders of the territorial and provincial Churches.

Here again we see how, by the use of might, right is changed to wrong. The Nazis make a religion of their political views, and accuse of criminal political activities all those who adhere to an unfalsified Gospel. In this the Nazi Party and the State authorities give powerful help.

Göbbels, in his capacity as Minister of Enlightenment and Propaganda, has secretly banned radio broadcasts of sermons and religious services as from April 1939. On Whit Sunday the devout, Protestants and Catholics alike,

[1] *German Evangelical Church Gazette* of 6th April 1939.

listened in vain for the usual religious programme. In reply to their inquiries, they were informed that the wireless was a government institution and not an instrument for the practice or propagation of the creed of the Confessional Church. The request that an exception should be made in the case of the sick, or of delicate persons who cannot attend Church, was refused. The Reich Chamber of Literature, which is under the command of Göbbels,[1] has issued an order that bibles and religious tracts for general sale may be displayed only in the few book-shops that deal exclusively in religious publications. Other book-shops may sell religious works only when they are expressly ordered by a customer. Bible or tract societies are forbidden in future to subsidise publishers, since all such publications must pay for themselves.

In October 1938, Rust, the Reich Minister of Education, confirmed the decision that methods of instruction should be left to the conscience of the individual teacher. Since then he has tried to meet the wishes of the Nazi Teachers' Federation,[2] whose aim is to free German religion from all Christian customs and thus to keep in line with the religious views of Himmler's *Schwarze Korps*, the organ of the Black Guards, which the former Reich Bishop Müller and his "legal administrator," Jaeger,[3] had followed, a fact that led to quarrels with Dr. Werner.[4] This contradictory situation still exists, and it inspired Dr. Werner to submit a memorandum to Kerrl on 29th November 1938, in which he asked him to request the Führer to allow the school teachers to resume the religious instruction that had been discontinued in accordance with the demand of the Nazi Teachers' Federation. Werner said it was possible that the Federation had refrained from issuing an explicit order to this effect, but that it was evident to him, from his observation of many cases and from statements of teachers who had felt the prickings of conscience, that some kind of pressure had been brought to bear on them.

[1] See pp. 229, 249.
[2] See pp. 155, 174.
[3] See p. 366.
[4] See *n.* 2, p. 368.

It should not be forgotten, however, that the difference between Werner and the Nazi Teachers' Federation is one not of kind but only of degree. He has not hesitated to exert pressure on the Confessional Church and the " intact " territorial or provincial Churches, without heed to their conscience. The fight for the destruction of the Confessional Church is in full swing, and is directed against the clergy and the theological students. The following are the methods employed :

Any clergyman of the Old Prussian Union Church may be summoned by the President of the Consistory and asked, if possible in the presence of the Chairman of the Finance Department, whether he recognises the Consistory as his supervisory authority, with which he must deal without the intervention of any third party, such as the Council of Brethren.[1] He must further say whether he will render due obedience to the laws of the State and the orders of the Church, particularly regarding collections and utterances from the pulpit.[1] If he neither replies at once in the affirmative, nor furnishes such a reply in writing within three weeks, or if he does not appear in answer to the summons, then, in accordance with the above-mentioned decrees of March and April 1939, he is deprived of his living.

All young clergymen who have been ordained up to 31st March 1939 in the Confessional Church must " legalise " themselves by passing a supplementary examination held by the Consistory.

Theological students are now obliged to take their examinations under German Christian authorities. In spite of Kerrl's prohibition, which was confirmed by the Supreme Court, the Confessional Church continues to hold its own examinations. These the State refuses to recognise.

The Confessional Church supports the education of theological students by means of voluntary contributions. The Confessional clergy subscribe regularly to these funds, their subscriptions often amounting to a third of their

[1] Dr. Werner's Order of 7th January 1939.

meagre incomes. Members of the congregations contribute much more than the amount of their Church tax, the additional contributions being applied to the support of those Confessional clergy who have lost their livings, and to the provision of a very modest livelihood for the young clergy and students who refuse to submit to the pressure of State regulations. Their number in the Old Prussian Union Church and those Churches in which the legal position is similar, amounts to about eleven hundred and fifty. Thus eleven hundred and fifty young Protestant clergymen could immediately obtain the means to live comfortably if they would yield. But they choose to suffer for the sake of their faith, and so they are no less worthy of praise than the older men who in various places have been exposed to ill-treatment and terroristic acts.

A letter of 7th February 1939 from the Council of Brethren of the Old Prussian Union Church to Reich Minister Kerrl mentions that during recent years about two thousand Evangelical clergymen and Church members have been arrested or otherwise punished. The total number of Protestant clergymen is seventeen thousand. Thus nearly 12 per cent. of them have been steadfast in their resistance, though in reality their number is much greater, for measures have generally been taken only against the most recalcitrant.

On Whit Sunday 1939 the clergy of the Confessional Church announced from their pulpits that they would no longer accept the orders of Dr. Werner as binding. This was followed by a special prayer for Pastor Niemöller. The Gestapo tried by intimidation to prevent the Confessional clergymen from making this announcement, but succeeded in a few exceptional cases only.

At the beginning of May 1939 about ninety-seven Confessional clergy were forcibly prevented from exercising their office, in some cases by expulsion from the towns where they were living, in others by house-arrest. More than sixty, among them General Superintendent Dibelius, are forbidden to speak in public.

The Bishops of Bavaria, Württemberg, Hanover and Baden are in a special position. They have been reproached for submitting, for having failed to intercede for Niemöller's release, and for their attitude towards the intercession for peace. The fact is, however, that they have so far been successful in preserving the independence of their territorial Churches, since most of the new regulations have been issued by those Church Governments in which the German Christians prevail, *e.g.* in the Old Prussian Union Church, and not by the Reich Evangelical Church. They are exposed to the same danger as in 1934, when Jaeger attempted to bring Bavaria and Württemberg into the National Church. Will the bishops again make as brave a stand?

The new attacks are not being made as open challenges, but underhand, through the bureaucracy. The Nazis have absorbed into their ranks men with previous training in the art of government and with trained legal minds, which under Nazi pressure they have perverted to the tricks of casuistry. Thus officialdom succeeds either in lulling the public conscience in religious matters, reproaching them for their lack of patriotism, or else in coercing people by threatening them with the law. It is obvious that such a bureaucracy, comprising men who, while highly skilled in governmental and legal uses (or abuses), lack intellectual integrity, and over whom the people have no control, must be a source of danger. Moreover, the routine that they must follow, and the measuring of all cases with the same official yardstick, causes them in time to lose perspective in regard to human values.

On the other hand it should not be forgotten that the accord between Kerrl or Werner and the German Christians is not as close as the Nazi Press would have us believe. Evidence of this is provided by the numerous declarations made during 1939.

The Confessional Church condemns no one who submits to the State authorities. Each man must be guided by his conscience, and must make his decision in complete freedom. It is the individual's own responsibility. To the

Church the use of force is inadmissible. It asks one thing only: that he who no longer wishes to accept the Holy Gospel should follow his convictions whithersoever they may take him; but he should not attempt to remain within the Church of Christ.

A last struggle for faith and freedom of thought has begun in the Confessional Church. All points relating to the question of obedience to the State are being discussed. For example, it is said: [1] "For we are promised that the Gospel shall remain on earth until the day of judgment, but not that it shall always remain in our country. . . . Is it perhaps the will of God that this gift of grace shall be taken from Germany?"

But again and again its members return to their Protestant faith, in which they find their justification and from which they derive strength to meet what may come. And they meditate upon the causes that have brought the world to such a pass—causes for which all are responsible: lack of simple faith and true brotherly love.[2]

NOTE.—The devastated Church areas, mentioned on page 405, are as follows: Saxony, Hesse-Nassau, Schleswig-Holstein, Thuringei, Mecklenburg, the Palatinate, Anhalt, Oldenburg, Lübeck, and Austria.

[1] Memorandum circulated concerning the Confessional Church Synod, February 1939.

[2] Message from the Confessional Synod, January 1939.

CONCLUSION

"ANY donkey can rule by curfew." The plight of the German nation, with its multiplicity of laws, leads one to recall the old epigram. As yet, people outside Germany have no conception of the curfew conditions which the present régime has created : it controls every department of life thoroughly, monotonously and without hope of cessation. It would be, however, unworthy of an objective critic to attribute to the present German government a quality which it no longer possesses any more than the idealism which it so vigorously emphasises, but behind which one may always discern highly realistic intentions. For the Nazi régime, which regards the people as merely a dull herd, might reverse the old saying, to read : "One must rule donkeys by curfew."

The German nation is not at heart National Socialist, and the very number of the new laws proves it. Nevertheless, the statement is often heard that the German people must like their present rulers ; otherwise they would free themselves from their control. The joy in uniforms and military discipline appears to be stronger than the love of freedom. This much can be said in refutation of the argument. When in a gathering of friends one of the party suddenly draws a revolver and forces the others to do his bidding, it cannot be maintained that the group is acting voluntarily or enjoying the situation. Admittedly the circle had drawn this man into its midst believing him a friend. But in a similar way even such experienced judges of men as British statesmen have placed a blind confidence in National Socialism.

Perhaps in no country in the world has freedom been so

glorified in poetry and music as in Germany, but possibly nowhere else does such a strong contrast exist between the ideal and reality. This may be attributed in part to shortcomings in the system of education. In German schools discussion on questions of the day has never been encouraged, and consequently German youth fails to acquire the respect for an opponent that comes from the give-and-take of such mental exercise. The result is an impatience with a point of view which differs from one's own, and a tendency toward the facile answer, which often conceals an inability to meet a situation adequately. Moreover, except for the insignificant uprisings of 1848, the right to civil liberties for which the French people fought at the end of the eighteenth century in a bloody revolution, and for which the English people had already struggled, fell into the laps of the German as a free gift of their absolute monarchs. The jurists of the state and administrative law assumed an intellectual leadership, and persuaded their rulers to avoid the danger of violent uprisings by yielding at the opportune moment of their own free will.

To-day the German people are suffering because to a large extent those who were compelled by their education and position to make a stand have submitted to the present régime. It is unbearable when, for example, university professors not only do not remain true to the principles of their professions but allow established scientific facts to be falsified for political reasons. Through Darwin's researches we know that even in organisms of different characteristics the possibility of a common ancestry exists. Consequently, that thesis of our philosophy, originating with Socrates and Plato, which holds that virtue can be taught to all men, has its scientific confirmation. This means that the qualities which are necessary for the creation of a civilised community can be awakened in every man through suitable education and organisation. Rosenberg [1] states the contrary. According to him good qualities are unalterably laid in the cradles of some races and bad qualities in those of others.

[1] *Op. cit.* p. 78.

And he goes on to deduce from that, " naturally, historically and philosophically," the right of the " chosen " nordic-German people to world domination, which is to be won through the power of the sword. The fate of the conquered is eternal subjugation. The social absorption of the subjugated by friendly assimilation is excluded on racial grounds. This holds not only in regard to the Jews, but also to other peoples, who are alleged not to be the equals by birth of the nordic-German race or who are considered to be spiritually corrupt. No one should permit the emphasis on anti-semitism in the present struggle to obscure these fundamental assumptions of National Socialist reasoning.[1]

The further the new German domination is extended over non-German territory the more this teaching is forced upon men. The resistance of " free " science is broken. New " professors " are appointed who proclaim the new teaching to be something that can only be compared with the work of a Copernicus or a Galileo. These pronouncements are received without open question at home, and are not even refuted with sufficient cogency abroad.

But science should serve truth alone. It should defend human culture and restrict politics to its own boundaries when the latter attempts to draw science into its own pernicious orbit. Science could do this all the more effectively when on this point it is in happy harmony with religious thought.

Those " learned men " who prostitute the use of science prevent stupidity from being overcome. Whatever motives may induce them to exclude the use of intelligence and feeling, the ultimate result will not be affected. Stupidity should be fought, for it hinders spontaneous impulses and crushes the life of the soul. The leaders' lust for power grows in proportion to their lack of restraint through criticism. Leadership becomes intoxicated with the applause of the intimidated masses, whose enthusiasm is whipped ever higher so as to make them insensible to the

[1] See pp. 142–3.

sufferings of those who must be sacrificed in order to satisfy them.

In spite of this, certain limits to the effects of mass psychology are beginning to appear in the German people. They were evident in the expressions of disapproval of the November pogroms 1938. The change had already shown itself with unexpected clearness in Munich during the visit of Mr. Chamberlain, the British Prime Minister. The people tore off their mask of heroism and paid homage to him spontaneously for his efforts to preserve peace.

Enough vigorous men and women of the War period still live in Germany; men and women who once were full of enthusiasm for the homeland, and who now ask: "We waded through seas of blood. For what? Did the World War bring blessing to one single country? Did it solve a single one of the crucial problems? In a new war would not the women and children be directly exposed to its dangers? Why should we be expected to trust blindly in the Führer if he pursues a policy which might involve us in war?"

Naturally these questions are not asked openly. The German people has learned not to betray its thoughts by its outward demeanour. For the Germans long for a little personal happiness without disturbance from attacks by the police force. Moreover, they often remain silent because they feel that the time for decisive action has not yet come. But it is dawning upon them how destructive government by force is to human nature. A constantly increasing number of people are learning to dissemble their feelings. They flatter those in power with friendly smiles to their faces and curse them behind their backs. Thus are bred slyness and treachery. The ability to slip through the meshes of the law is becoming a mastercraft. Corruption has eaten even into the once blameless Prussian-German administration.

The German people must remove these conditions through their own efforts and win their freedom again. They do not deserve it otherwise. It would be a mis-

fortune if Hitler's overthrow were brought about by foreign powers through war. The democracies contributed greatly to Hitler's rise through their treatment of the Weimar Republic, and within their boundaries to-day are men with international business interests who still consider it advantageous to prevent Hitler's downfall. The decisive step towards his fall must be taken by Germany itself!

In this people a peculiar sort of individualism has developed, as a result of which these qualities necessary for the development of society have not been awakened and cultivated. The absence of them has given many Germans a vague feeling of guilt towards society, a circumstance which may offer some explanation of their childlike obedience to authority. It may be an unconscious desire to compensate for these undeveloped qualities. In spite of this, a longing to cultivate these qualities and thereby to develop their personalities is not extinct in the German people. A difficult path, which will be determined essentially by economic conditions, must be trod before this desire will be realised. It doubtless will be trod, because a system that rests upon force alone is too weak to exercise control over itself and must, therefore, come to ultimate ruin. The knowledge of the truth is growing, in spite of every effort of the Nazi régime to brutalise the people and shut them off from the outside world. The words of Abraham Lincoln are as true in Nazi Germany as they were in ante-bellum America: "You can fool some of the people all the time and all the people some of the time, but you can't fool all the people all the time."

Gratification over the removal of the injustice of Versailles has been grimly overshadowed since the Hitler régime made the Versailles Treaty an excuse to perpetrate further injustices and to scorn such peaceful methods as, if employed, could have attained the same end. It is hard to look on in silence while injustice is done to a third party; it is, however, still harder to suffer injustice oneself and to refrain from taking revenge, although a change in the relative strength of the powers would have made that

possible. This greatness Nazi Germany has not shown. Will the democracies be able to do so when the next opportunity offers ?

In times of political tension national feelings run high. It is very convenient to allow hatred to stifle one's own responsibility. The German people should not be made the object of hatred. They are not to be identified with Hitler. Those who suppress such hatred diminish the danger of war. The constitutions of the democratic countries would permit their citizens, if they so desired, to use every modern means of communication to tell the German people that the world sincerely recognises their great qualities and wishes to live at peace with them. They could further make it clear that the decision to restrain Germany once again was only taken in order to prevent renewed acts of violence on the part of its present government.

If the German people feels convinced that the Versailles epoch is definitely over and that the other nations also have learned from history, it will not be prepared to fight for the Nazi régime. Only then will the Nazi government be truly tested !

Up till now nations have based their welfare upon the misfortunes of other states. Have not scientific developments, which have brought us all nearer to one another, led us to the point where our thoughts, beliefs and consciences should no longer stop at the frontier ?

When we follow modern developments with observant eyes, we notice, among other things, a change in the character of property. Ownership tends to be regarded as trusteeship and the interest of society in the property is recognised. The Nazis themselves have made use of this conception. For example, should the owner of a piece of agricultural property fail to increase the yield of the soil to the requisite amount, coercive measures can be taken against him.[1] This regulation is only to be valid up to 31st March 1941,[1] as the Nazis hope by that time to have conquered so much land that the German farmer can

[1] Order concerning the Security of Agriculture, 3rd March 1937.

again do or leave undone what he pleases as he did " in the good old days ! "

If we see in this development, which is evident in every country, the legal expression of change in the social structure, then we should gladly encourage it. We should ask ourselves, however, whether the time has not come for nations to regard the treasured riches of the soil as entrusted to their possession for the benefit of the brotherhood of all nations.

The idea of a genuine League of Nations will not die. When, some day, we are strong enough spiritually to exercise a greater amount of virtue, disagreement and differences will be set aside by means other than war or the threat of war.

The democracies have certainly rendered a service to civilisation in setting up barriers against concentration camps and trials for high treason. There are still regions in which reason prevails and can openly seek to find a system of law which will lead us all out of our difficulties. But we must not close our eyes to the fact that even in democratic countries there are people in all classes of society in whom the spirit of democracy is not to be found.

We open the way to despotism, if we no longer believe in justice and freedom as the highest gifts to mankind. To this belief we must hold fast, not in spite of, but because of, our bitter experiences. We must transform that belief into deeds. The day must come when we shall unmask those forces which behind the façade of public order are destroying a century-old culture. Then the German people will no longer march in goose-step towards chaos !

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